United States Court of Appeals for the Second Circuit



APPENDIX

76-1262



In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA.

Plaintiff-Appellee,

vs.

HARVEY OST,

Defendant-Appellant.

APPELLANT'S APPENDIX

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O.Brien - direct

DOCKET ENTRIES

CRIMINAL DOCKET UNITED STATES DISTRICT COURT Judge Cannella 75 Crim. 391

Attorneys

Title of Case

For U.S.:

THE UNITED STATES

vs.

Richard Wile, AUSA.

791-0042

HARVEY OST

For Defendant:

Kalman Gallop 1345 Ave. of Americas

NYC....246-2880

Statistical Record Costs

Name or Date Receipt No.

Rec. Disb.

J.S. 2 mailed J.S. 3 mailed X Violation

Clerk Marshal

Docket fee

Title 26

Sec. 7201,7206(1)

Income tax evasion. (Ct. 1)

False income tax return. (Ct. 2)

(Twc counts)

Date	Proceedings
4-15-75	Filed indictment.
4-28-75	Deft. (atty. present) Pleads not filty. Motions returnable in 10 days. Ordered photographed and fingerprinted. Deft. released on his own recognizance. Case assigned to Cannella, J. for all purposes.
	Pierce. J.
4-30-75	Filed notice of appearance by Kalman Gallop 1345 Ave.A Mew York City
9-22-75	Filed Waiver of trial by Jury: Approved Cannella, J.:
	Trial begun.

9-23-75 Trial cont'd. 9-24-75 Trial cont'd and conided...Dec. Res. submit briefs..Deft. R.O.R. continued... Cannelia, J. 10-6-75 Filed deft's post-trial memorandum. 10-14-75

10-31-75 Filed opinion #43321 The deft was tried before this Court without a jury on one count of violating 26 U.S.C. 7201 and one count of violating 26 U.S.C. 7206(1).. After considering the evidence adduced *** * the Court finds the deft's GUILT on both counts to have been established beyond a reasonable doubt****The deft is therefore found GUILTY on both counts.....Cannella, J....m/n

Filed Government's post-trial memorandum.

12-3-75 Filed transcript of record of proceedings, dated Sept. 22, 23, 24, 1975

Filed Judgment and commitment (76,497) (atty present.) the deft. is hereby committed to the 05-26-76 custody of the Attorney General or his authorized representative for imprisonment for a period of Four (4) Months on Count 1 and Fined \$5,000.00 committed. Three (3) Years on count 2. Execution of sentence on count 2 is suspended. Deft. is placed on probation for a period of three (3) years, subject to the standing probation order of this court, and Fined \$5,000.00 non-committed. Total fines of \$10,000.00. Bail fixed at \$5,000.00 pending appeal. Deft. released in the custody of his atty. until bail is posted....CANNELLA, J. Issued commitment. 5-27-76.

6-4-76 Filed notice of appeal from judgment dtd. 5-26-76 copy mailed to defts atty. and given to U.S.Atty's office.

6-9-76 Filed bond in amt. of \$5,000, secured by \$5,000 cash Pending appeal...

A + 1. 2 2 1 - 2 2

United States district count SOUTherm DISTRICT OF THE TORK 75 CRM. 391

UNITED STATES OF ASSAULA, . . . : INDIGITION

-v- : 75 Cr.

HARVEY OST, :

Defendant. :

COUNT OHE

APR 15 1975

The Grand Jury charges:

On or about April 15, 1969, in the Southern District of New York and elsewhere, MARVEY OST, the defendant, who during the calendar year 1965 was married, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1965, by preparing and causing to be prepared, by signing and causing to be signed, and by filing and causing to be filed with the Internal Revenue Service, a false and fraudulent joint United States Individual Income Tax Return (Form 1040) on behalf of himself and his wife, wherein it was stated that their joint taxable income for said calendar year was the sum of \$10,513.42 and that the amount of tax due and owing thereon was the sum of \$2,006.34, whereas, as the defendant HARVEY OST, then and there well knew, their joint taxable income for said calendar year was the sum of \$42,474.39, upon which taxable income there was due and owing to the United States of America an income tax of \$11,238.20.

(Title 25, United States Code; Section 7201 and Title 18, United States Code, Section 2.)

COUNT TWO

The Grand Jury further charges:

On or about April 15, 1969, in the Southern District of New York and elsewhere, HARVEY OST, the defendant, who during the calendar year 1968 was married, unlawfully, willfully and knowingly did make and subscribe ' and cause to be made and subscribed a joint United States Individual Income Tax Return (Form 1040) for the calendar. year 1968 on behalf of himself and his wife, which Tax Return was verified by a written declaration that it was made under the penalties of perjury, and was filed with the Internal Revenue Service, and which Tax Return the defendant HARVEY OST did not believe to be true and correct as to every material matter, in that the defendant falsely stated therein that he and his wife had short term capital gains during the period from January 1, 1968 through December 31, 1968, in the amount of \$1,593.75, whereas, in truth and in fact, as the defendant then and there well knew, he and his wife had short term capital gains for said period in the amount of \$2,638.00, and further falsely stated therein that their joint taxable income during said period was \$10,513.1.2, and that the income tax due and owing thereon was \$2,006.84, whereas, in truth. and in fact, as the defendant then and there well knew, their joint taxable income for said period was \$42,474.39, upon which taxable income there was due and owing to the United States of America an income tax of \$11,238.20.

(Title 26, United States Code, Section 7206(1) and Title 18, United States Code, Section 2.)

Foresas Manguer

PAUL J CULTUR

United States Attorney

2	DIRECT EXA	MINATION
3	BY MR. WILL	8:
4	0	By whom are you employed?
5	. А	Allstate Maintenance Company.
6	Q	What is your position?
7	. A	Vice-president.
8	Q	Were you employed in 1968 and if so by whom?
9	A	I was employed by Weinberg, Ost & Hayton.
10	Q	Where was the office of Weinberg, Ost & Hayton
11	located in	1968?
2	A	52 Broadway.
13	Q	What was the business of Weinberg, Ost & Hayton?
4	A	General stock brokerage firm.
5	Q	Who are the principals of that firm?
6	A	Ed Hayton, Harvey Ost and Sidney Weinberg.
7	. Q	Do you see Mr. Ost in this courtroom?
8	A	Yes.
9	Q	Will you please point him out?
0	•	MR. GALLOP: I will concede that, your Honor.
1	Q	What was Mr. Ost's primary responsibility at
2	the firm?	
3	A	Office manager. He generally took care of the

Please try to keep your voice up.

affairs of the business as far as clerical.

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What were the responsibilities of Wainberg and Hayton?

A Sidney Weinberg was the trader of the company and Ed Hayton took care of mutual funds and salesmen's commissions and salaries.

What was your position with Weinberg, Ost & Hayton at the last point in time at which you were still associated with that company?

- A I was the head cashier.
- Q What were your duties as head cashier?

A I oversaw the daily functions of the company, the daily clerical functions of the company.

Q During what period were you head cashier of Weinberg, Ost & Hayton?

A From approximately December of '67 to approximately November or December of '68.

- Q When were you first hired by Weinberg, Ost & Hayton?
 - A In August of 1967.
- Q From August of 1967 until the time when you became head cashier what was your position at the firm?
 - A I was assistant to the cashier at that time.
- Q Mr. O'Brien, are you the defendant named in Information 75 Criminal 328 filed in this court on March

		7a	
1	wip	O'Brien - direct	16
2	31, 1975?		
3	A	Yes.	
4	Q	Does that information charge you with h	aving
5	evaded tax	es on income of approximately \$75,000 in	1968
6	and \$8,000	in 1969?	
7	A	That information does, yes.	
8	Q	Did you plead guilty to Count 1 of that	infor
9	mation whi	ch relates to the taxable year 1968 on Man	rch 31
10	1975 before	Judge Charles Brieant?	
11	A	Yes, I pleaded guilty to the charge and	I did
12	not admit t	the amount of money involved.	•
13	Q	Prior to your guilty plea did you reach	an
14	understandi	ing or an agreement of any kind with the	govern
15	ment?		
16	A	Yes.	
17	· Q	What representative of the government wa	as that
8	agreement r	eached with?	
9	A	With the U.S. Attorney's Office.	
o	- Q	Which Assistant U.S. Attorney?	
1	Α.	With you.	
2	Q	What are the terms of that agreement bet	ween

judge that I had been helpful to the government.

Only that you would relay to the sentencing

you and the government?

24

	1	08	
1	wip	O'Brien - direct	17
2	Q	Was it part of the agreement that you would	la
3	plead guil	ty to tax evasion for one of the two years	for
4	which you	had been investigated?	
5	A	Yes.	
6	Q	Did you agree to tell the government about	:
7	testifying	before the grand jury in a trial about any	tax
8	evasion or	any other crimes of which you had knowledge	?
9	Λ	Yes.	
10	Q	And did the government promise you that it	would
11	tell Judge	Brieant about your cooperation before you w	ere
12	sentenced l	by him?	
13	A	Yes.	
14	Q	Have you been sentenced yet?	
15	A	No.	
16	Q	When are you scheduled to be sentenced?	
17	. А	October 6, 1975.	
18	. Q	Handing you a document marked Government	
19	Exhibit 35	for identification, what is that document?	
20	- A	This is a photostat of an account that was	at
01	the firm of	Weinberg Oct & Hauton	

Q Who made Exhibit 35 for identification?

A I did.

23

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Q When?

A Approximately November or December of 1968.

1	WCb	C'Brien - direct
2	Q	Did Weinberg, Ost & Hayton maintain customer
3	ledger in the	he ordinary course of its brokerage business?
4	A	Yes-
5	Q	Was it the ordinary course of that brokerage
6	business of	Weinberg, Ost & Hayton to maintain customer
7	ledgers?	
8	Α .	Yes.
9	Q	When did Weinberg, Ost & Hayton make entries
10	on its custo	omer ledgers?
11	A	Basically right after the trades were done.
2	Q	Please speak up.
3	A	Basically as soon as possible after the
4	trades were	completed.
5		MR. WILE: I offer Government Exhibit 35 for
6	identificati	ion into evidence.
7		MR. GALLOP May I ask a couple of questions?
8		THE COURT: Of course.
9	VOIR DIRE EX	CAMINATION
0	BY MR. GALLO	OP:
1	Q	When was this photostat made?
2	. А	Approximately November December 1968.
3	Q	Is this the complete account?
4	A	No.

Do you have any knowledge as to how many other

ě.,

25

THE COURT: It is not being offered for that

is November 19, 1968 and at that time I am also going to offer into evidence two other documents that don't require witnesses.

The first is a certificate of marriage registration, marked Government Exhibit 34 for identification.

It is a certification by the clerk of the City of New

York that Harvey Ost and Selma Faffer Holtz were married --

MR. WILE: It is just as easy to hand the docu-

THE COURT: He said he would stipulate to that.

MR. GALLOP: I have no objection.

MR. WILE: October 31, 1954 this is dated, and that Mr. Ost's parents are Aaron Ost and his mother's maiden name is Tessie Bieber.

(Government Exhibit 34 received in evidence)

MR. WILE: The next exhibit is Government

Exhibit 36 for identification, a 1968 tax return, the

taxpayer's name is Tessie Ost. The address is 42-10

Colden Street, Flushing, New York which is the same

address that appears on Government Exhibit 35 which is the

copy of the account statement of Selma Feffer Holtz.

MR. GALLOP: If the return is being offered for that limited purpose I have no objection. I

will stipulate to this.

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(Government's Exhibit 36 received in evidence)

Mr. O'Brien, at my request, have you analyzed the stop transactions reflected on Government Exhibit 357

Yes, I have.

How many transactions are listed there where stock that is bought is later sold?

The number eludes me. I think it is 28. There is one trade which does not show the stock sold.

Are you able to make any generalization about the lapse of time between the purchase and sale of those securities involved in the 28 transactions?

MR. GALLOP: I object to the form of the question, your Honor.

THE COURT: Rephrase it.

How much time elapsed --

THE COURT: Isn't the exhibit in evidence or can't you make the computation? Why does he have to make it?

MR. WILE: I can do it that way.

THE COURT: Tell us what it is.

MR. WILE: 27 of the 28 transactions, stock sold was purchased the same day, your Honor. There is one

transaction involving a stock called McGregor Donniger
which is sold four days after it's purchased. All 28
transactions are profitable and the total profit is \$35,651.25.

In addition, 150 shares of a stock called Metallurgical International simply marked on that account as received with no purchase price. Those shares were sold for a total sale price of \$5,370.50.

In addition, there are 18 checks listed as issued and debited to that account. That assumes that an entire which says to adjust incorrect entry reflects the issuance of a check.

However, those 18 checks, the total amount of those checks is \$32,425.

marked as an exhibit or anything but it breaks down the transactions in that account. I will show it to Mr. Gallop.

MR. GALLOP: Without conceding the arithmetic

I have no objection to the Court having this chart.

THE COURT: All right.

MR. WILE: I have labeled the part that the government maintains is the unreported income.

MR. GALLOP: May I be supplied with a copy of that?

MR. WILE: Yes.

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ii.

1	qjw O'Brien - direct 24
2	Q Where were customer ledgers kept at Weinberg
3	Ost & Hayton in 1968?
	A On the premises at 52 Broadway in the bookke
,	ing room.
,	O Were they kept in any kind of container?

Yes, in what was called a tub.

Did you ever have occasion to locate the customer ledger for the Selma Feffer Holtz account?

Yes.

Why?

Because we were balancing out for month end or balancing out for some reason and it was not there and I had to go locate it.

Q Where did you find the account ledger when you had to look for it if you did find it?

I did find it in the possession of Mr. Ost.

On every occasion when you had to look for

Yes.

Can you approximate the number of such occasions?

A few. I really could not approximate. It's too many years.

To your knowledge, did Weinberg, Ost & Hayton

	I ba
1	qjw O'Brien - direct 25
2	issue checks which were debited against the Selma Feffer
3	Holtz account?
4	A Yes.
5	Q Who gave the instructions for those checks to
6	be drawn?
7	A Mr. Ost.
8°	Q What happened to the checks after they were
9	drawn?
.0	A The checks were handed to Mr. Ost in his
1	office.
2	Q During 1968 did you have a conversation with
3	Mr. Ost about stock of a corporation named Metallurgical
4	International?
5	, A Yes.
6	Q Who initiated that conversation?
7	A I did.
8	Q Why?
9	A Because we were doing routine order of the
0	books of the company and there were securities missing and
1	I brought it to his attention.
2	Q Where did the conversation take place?
3	A In his office.
4	Q Was anybody other than you and Mr. Ost present
5	during that conversation?

1	qjw O'Brien - direct 26
2	A I am not wre. I think his partner, Sid
3	Weinberg, was there but I am not sure.
4	Q As best you can recall, in words or in substance
5	what did you say and what did Mr. Ost say?
6	A I told him we were missing the security and he
7	looked at me and said, "Forget about it, I will take cars
8	of it".
9	Q wr. O'Brien, because of heir bulk I am not
10	going to hand them to you but have you previously had a
11	chance to look at what have been marked Government Exhibits
12	1 through 13 which are now residing on the government's
13	cart?
14	A Yes.
15	, Q What are those volumes?
16	A Those are the daily blotters of the activities,
17	the bookkeeping activities of the firm.
18	Q Do you know what period is covered by Exhibits
19	1 through 13?
20	- A Whatever are noted on the books.
21	MR. WILE. For the record, your Honor, the
22	volumes cover the period collectively September 3, 1968
23	through December 31, 1968 and each individual blotter
24	covers the period reflected on the binding for that volume.
25	Q Are Government Exhibits 1 through 13 for

1	qjw, O'Brien - direct 27
2	identification records kept by Weinberg, Ost & Hayton
3	in the regular course of its broker-dealer business?
4	A Yes.
5	Q Was it the regular course of the business of
6	Weinberg, Ost & Hayton in 1968 to maintain Government
7	Exhibits 1 through 13 for identification?
8	A Yes.
9	Q When was it the practice of Ceinberg, Ost &
10	Hayton in 1968 to make entries in Government Exhibits 1
11	through 13 for identification?
12	A The same day, the next day or as soon as
13	practical after, depending on whether we were backlogged
14	Usually the next day.
15	MR. WILE: At this time I offer those 13
16	volumes into evidence.
17	MR. GALLOP: No objection.
18	(Government Exhibits 1 through 13
19	received in evidence)
20	• Q Are purchases and sales of securities by the
21	firm both for its own account and for the account of
22	customers entered in Exhibits 1 through 13?
23	A Yes.
24	Q Are receipts and deliveries of securities

entered there?

25

2	you do with regard to your occupation?
	19a
1	qjw O'Brien - direct 28
2	A Yes.
3	Q Are receipts and disbursements of cash and
4	checks also entered in those same exhibits?
5	A Yes.
6	Q I have handed you Government Exhibits 14 and
7	15 for identification.
8	Can you identify those volumes?
9	A Yes.
10	Q What are they?
11	A These are trading account sheets of the firm
12	Weinberg, Ost & Hayton.
13	Q What year?
14	λ 1968.
15	Q What trading account or accounts is contained
16	in Exhibit 14 for identification?
17	A Trading Account A.
18	Q Which in Exhibit 15 for identification?
19	A Trading Account B and C.
20	• Q Are Government Exhibits 14 and 15 for identifi-
21	cation records kept in the ordinary course of the business
22	of Weinberg, Ost & Hayton?
23	A Yes.
24	Q Was it the ordinary course of their business

in 1968 to maintain Government Exhibits 14 and 15 for

1	wtp	O'Brien - direct 30
2	Q	Are customer ledgers records maintained in the
3	ordinary co	urse of business of Weinberg, Ost & Hayton?
4	A	Yes.
5	Q	Was it the ordinary course of their business
6	to keep cus	tomer ledgers?
7	A	Yes.
8	Q	When did Weinberg, Ost & Hayton make entries
9	on customer	ledgers?
10	A	Generally the next day.
11		MR. WILE: At this time I offer Government
12	Exhibits 16	through 21 for identification into evidence.
13		MR. GALLOP: No objection.
14		(Government Exhibits 16 through 21
15	, recei	ved in evidence)
16	Q	Mr. O'Brien, look at Government Exhibit 15 and
17	turn to the	page in that volume that refers to transaction
18	in Trading	Account B in bonds of General Electronics
19	Corporation	bearing a 6-1/4 percent coupon and due in
20	1983.	
21	λ	Yes.
22	Q	Do you see a transaction listed on that page
23	for October	22, 1968?
24	A	Yes.
25	Q.	What does that entry reflect occurred on that

A

25

Absolutely.

THE COURT: All right, I got it now. 2 Q Mr. O'Brien, I am placing before you Government 3 Exhibit 16 and directing your attention to Sheet No. 4 4 for the account of Alvin Cohen. 5 Does that document reflec: the receipt of 6 three General Electronics bonds by Mr. Cohen on October 22, 7 8 1968? 9 Yes, it does. Now, I hand you Government Exhibit 18 and 10 refer you to Sheet No. 2 of an account entitled Edward 11 12 Hayton. Is there an entry on that page for the receipt 13 with no money of one General Electronics bond on October 14 22, 1968? 15 On November 22, '68, yes, there is. 16 I refer you to Exhibit 19, the account of Harvey 17 J. Ost, the first page of the book for that account. 18 Do you see an entry on that page that reflects 19 the receipt of one General Electronics bend on October 22, 20 1968? 21 22 A Yes. Finally I hand you Government Exhibit 20 and 23 the account, page 1 in that book, of the account of Sidney 24 Weinberg and ask you whether the redeipt of one General 25

	, "
2	Electronics bond for no money is reflected on October 22,
3	1968?
4	A Yes.
5	Q Finally, I hand you Government Exhibit 21,
6	two pages of an account entitled Harvey J. Ost and ask
7	you whether there is any indication of the disposition
8	of the General Electronics bonds that had been received
9	into that account on October 22nd?
10	A Yes. On December 16, 1968 it shows it
11	being sold.
12	Q Pardon?
13	A It shows it being sold on December 16, '68.
14	Q What was the sale price?
15	A The price was 102 which nets out at \$1,027.81.
16	Q Mr. O'Brien, when did you first become aware
17	that you were under investigation by the Internal Revenue
18	Service?
19	A In 1971.
20	. Q Did you have a conversation with Harvey Ost at
21	about that time?
22	A Yes.
23	Q Where?
24	A At his office.
25	Ω Was anybody else present?

4	, II A .	I don't know. I can't sav there was an
2	A	I am not sure. I don't think so.
3	Q	Did anything happen when you were in Mr.Ost's
4	office befo	re you and Mr. Ost had your conversation?
5	Α .	Excuse me?
6	Q	Did anything happen in that office prior to
7	the convers	ation between you and Mr. Ost?
8	A	Yes.
9	Q	What?
10	. А	He handed me some checks.
11	Q	I hand you Government Exhibits 22 and 23 for
12	identificat	ion.
13		Do you recognize those?
14	A	Yes.
15	, Q	What are they?
16	A	These are checks made out to Irene O'Brien,
17	my wife at	that time.
18	Q	What are the dates on those checks?
19	A	The dates are 7/12/68 and 7/23/68.
20	- Q	Do you know how those checks came into the
21	government'	s possession?
22	A	Yes.
23	Q	How?
24	A	I gave them to them.
25	Q	Where did you get them?

2	A From Miss Holtz.
3	MR. WILE: I offer them, your Honor.
4	MR. GALLOP: I object to the relevancy.
5	THE COURT: I will take it subject to connection
6	(Plaintiff's Exhibits 22 and 23 for
7	identification received in evidence,
8	Q What was the conversation that followed Mr.
9	Ost giving you those two checks?
10	A Mr. Ost told me that the Internal Revenue
11	people had been up to see him and that there were many
12	more checks like this in the file and that if I wanted
13	to the doors would be open over the weekend and it would
14	not be a bad idea to have a fire.
15	MR. WILE: I have no further questions, your
16	Honor.
17	THE COURT: As I understand it none of this
18	is redacted as far as this 3500 material.
19	MR. WILE: Only matter enclosed within
20	red brackets is redacted. If there is nothing in the
21	exhibit
22	THE COURT: Have you given him a redacted copy
23	MR. WILE: Yes.
24	THE COURT: I do not see any reason why he
25	should not have the rest of it. It is true he didn't

3 event it is innoculous to a great degree. MR. WILE: I agree. U THE COURT: It is like a virgin who never meets her 6 husband until the honeymoon, she might as well find out 7 what she is missing. 8 MR. GALLOP: I have never read any of the 9 3500 material. In order to expedite I have no objection 10 to starting my cross examination. 11 THE COURT: It is only a couple of pages, go 12 ahead and flip through it. 13 MR. GALLOP: I am presented with a transcript 14 some 22 pages long and another transcript which is I 15 guess six or seven pages and about seven pages. I guess about 40 pages I have, your Honor. I don't know if you 16 17 prefer I read it first. 18 THE COURT: Whatever you want to do. 19 MR. GALLOP: I have no objection to starting 20 my cross. MR. WILE: The 23 page transcript is Mr. 21 22 O'Brien pleading guilty in Part I to tax evasion. It , 23 has all been covered on the direct examination. The grand jury testimony is six pages and a 24 25 one or two page interview.

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3	It is all r	ight with me.
4	CROSS EXAMI	NATION
5	BY MR. GALL	OP:
6	Q	With regard to the checks of Ilene O'Brien,
7	when were t	hose checks turned over?
8	A	In 1971.
9	Q	Do you recall
10	A	I am sorry, when were the checks turned over
21	to me?	
12	Q	Yes.
13	A	1971.
14	Q	I assume Irene O'Brien is your wife, is that
15	correct?	
16		THE COURT: War his wife.
17	Q	She was your wife?
18	A.	Yes.
19	Q	Was she your wife in '68?
20	- A	Yes.
21	Q	Was there an account in her name?
22	A	Yes
23	Q	And the two checks which you received, what did
24	they repres	ent?
25	A	What did these checks represent?

1	wtp	O'Brien - cross 39
2	Q	Yes.
3	A	Checks drawn to her order. I could not tell
4	you offhand	what they were for.
5	Q	There is a check for \$,070.38.
6	A	Offhand I can't tell you.
7	Q	A check for \$5,000 and you don't know what they
8	were for?	
9	A	You mean for what sale of stock or something
10	like that?	
11	Q	Do they represent proceeds from an account?
12	A	Probably, yes.
13	Q	Do you know?
14	. А	I would assume they would, yes.
15	, Q	Your former wife maintained an account in 1968?
16	A	Yes.
17	Q	Did she maintain the account or did you maintain
18	an account	in her name?
19	A	I maintained an account in her name.
-	- Q	How many accounts did you maintain at Weinberg,
21	Ost & Hayton	1?
22	A	Many.
23	Q <	Can you be more specific?
24	A	Five, maybe more.
25	Q	Maybe ten?

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More than 100?

Less than 100.

1	qjw O'Brien - cross 41
2	Q More than 50?
3	A Less than 100, I don't know.
4	Q These represent the monies which were taken
5	out of the account which you didn't declare on your income
6	tax return?
7	A I don't know.
8	Q Is there anything that these particular checks
9	represent that the other checks do not represent that would
10	make these checks more important to you?
11	A Not to my knowledge. It was not stipulated
12	to me as such if that is what you are asking me. It
13	was not stipulated to me that these were special checks.
14	I don't know the reason why.
15	Q Would not the transactions which are reflected
16	by these checks be in the records of Weinberg, Ost & Hayton?
17	A That is right.
18	Q So destroying the checks alone would not destroy
19	evidence of these transactions, isn't that correct?
20	- A That is correct.
21	Q They would really serve no purpose in and of
22	themselves, is that correct?
23	MR. WILE: Objection.
24	MR. GALLOP: Withdrawn.
25	Q When you left Weinberg, Ost & Hayton what did

1	wtp	O'Brien - cross 42
2	you do w	ith regard to your occupation?
3	• А	I opened up a brokerage firm, a stock brokerage
4	firm.	
5	Q	With who did you open up that stock brokerage
6	firm?	
7	A	I had a partner, another person.
8	Q	Who was the other person?
9	A	There were two other people, Sylvia Austin
10	and Marc	y Tanner.
11	Q	What was the name of that firm?
12	· A	Austin James.
13	Q	Was James the James from James O'Brien?
14	A	Yes.
15	. 0	And Austin, was that Sylvia Austin?
16	A	Yes.
17	Q	Was she married to anybody related to Weinberg,
18	Ost & Ha	yton?
19	A	Yes.
	- Q	Who was she married to?
21	A	Aaron Schwinger.
22	Q	Who was Aaron Schwinger?
23	A	He was the accountant.
24	٥	Was he the accountant during 1968?
25	A	Yes, I think so.

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	A	That	firm	was	approved	by	the	SEC	in	January
1969.										

- Q When did you first find out that you were being audited for your own personal tax return?
 - A 1971.
 - Q That was long after you left the firm, right?
 - A Yes.
- Q What prompted you to make photostats in November 1968?

A In all the time I knew Mr. Ost, particularly towards the end he was a very vindictive person who made a lot of trouble for people and I was going to make sure he was not going to make trouble for me. I was going to remind him he would not be able to if I showed this to him.

Q You say Mr. Ost was a very vindictive person?

A That is right, I was going into direct competition with him.

You were going into competition with him.
You say you wanted to make sure -- what did you say? What did you want to make sure of?

A I wanted something to use as a wedge to him if he did anything to me. He was a very vindictive person.

Q Would you say there was a clash of personalities

Yes.

2

you?

1	qjw O'Brien - cross 45
•	between you and Mr. Ost?
•	A Absolutely.
•	Q Yet you were asked to stay on after you gave
•	notice?
•	A That is right.
7	Q And you were asked to stay on after you gave
8	notice you were going in competition to him?
9	A That is right.
10	Q This is inspite of this vindictiveness?
11	A That is right.
12	Q When Mr. Ost gave you the two checks that
13	you say he gave you in your former wife's name, was that
14	because he was trying to do some harm to you?
15	A You want me to answer as I know the answer
16	or do you want me to answer the question?
17	Q Let me rephrase the question. The testimony
18	was that you say Mr. Ost gave you these two checks and
19	believe you made a statement something to the effect that
20	these checks were damaging and his doors would be opened
21	so you could I assume have access to the record to get
22	other checks like this, isn't that your testimony?
23	A Yes.
24	Q Was this because Mr. Ost was trying to hurt

		37a
1	wtp	O'Brien - cross 46
2	A	Do you want me to guess the answer?
3	Q	Do you know?
4	A	If he was trying to hurt me? I think he had
5	another mot	ive.
6	Q	You didn't accept this offer as being an offer
7	to help you	, is that correct?
8	A	No, I didn't.
9	Q	You wanted this to use against Mr. Ost, this
10	particular	transcript of an account, is that correct?
11	A	That is correct.
12	Q	When did you intend to use it?
13	A	Hopefully never.
14	Q	What came about that you decided to use it
15	against Mr.	Ost?
16	A	Wha came about?
17	Q	Yes, what event happened that prompted you
18	to decide to	o use it?
19	A	I gave it to the U.S. Government.
20	- Q	Did Mr. Ost turn you in to the U.S.Government?
21	A	I don't know that.
22	Q	Did you do it or were you prompted to turn it
23	over to the	government because of something you know that
24	Mr. Ost did	to you?

No, not something that I know he did to me, no.

1	qjw O'Brien - cross 47
2	Q Did you turn it over to the government because
3	you felt that by turning over this information which might
	lead
	A Can I answer you there? You know, there were
	a lot of problems going on between his firm and my firm
	as we progressed as a firm. We had no love for each
1	other.

From 1971 on there was no love between Mr. Ost and myself, if that answers your question.

Q But this was turned over only at a point in time when you felt that by cooperating with the government it might be helpful to you, isn't that correct?

A Yes, I thought that was possible.

Q Was that long after Mr. Ost's firm went out of business?

A You mean Weinberg, Ost & Hayton?

Q Yes. No longer in competition, is that correct?

A There was another firm that superseded that firm right away.

Q In any case, you felt you could use the Selma Feffer Holtz account in some way to get Mr. Ost if you had to, is that fair to say?

A That is fair to say.

correct?

•	4)
2	Q Nothing came up until after your indictment
3	where you felt you had to get Mr. Ost, is that correct?
4	A No, I agreed to cooperate with the government
5	and part of the agreement his name came up in an investi-
6	gation. I happened to have some information against him.
7	Q You were all too glad at that time to use it
8	because of this bad feeling you had for him, right?
9	MR. WILE: I object to the form.
10	THE COURT: I think you covered the ground
11	actually. He said so in so many words.
12	Q Mr. O'Brien, this account that you photostated,
13	how did you know that this particular account was an account
14	in the name of Mr. Ost's wife's maiden name?
15	. A How did I know it?
16	Q How did you know that Harvey Ost's wife's,
17	Selma, that her maiden name was Feffer Holtz?
w.	A It was common knowledge. He never denied that
19	it was his wife. Did he ever say to me this Selma Feffer
20	Holtz is my wife, are you saying that to me?
21	Q You say it was common knowledge. I will accept
22	that answer.
23	In other words, it was well known throughout
24	the firm that Selma Feffer Holtz was Selma Ost, is that

3	A NOT all checks, no. Not all checks T wouldn't
1	qjw O'Brien - cross 49
2	Q There was no attempt by anyone to hide that
3	face, isn't that correct?
4	A I don't know. I can't say there was an
	attempt to hide. I am just saying it was well known in the
6	back office.
7	Q What led you to believe that the existence of
8	this account would in some way be damaging to Mr. Ost?
9	A I would not know if it would be damaging.
10	Q What about this account singling it out and you
11	took it in November to protect yourself or to use at some
12	future date.
13	A I didn't know if he would create SEC problems
14	for me or something like that and I wanted to show him I
15	could do the same for him.
16	Q In what way did you feel this account could
17	create problems for Mr. Ost?
18	A Well, if there are new issues in there, if
19	there is preferential trading in that account it's a
20	wiolation of SEC and NASD rules. If there is a preferential
21	treatment being made in that account
22	Q Did you know at the time you took it that there
23	were any such preferential treatment or violations?
4	A Absolutely.
25	Q You did?

.3	bonds. is t	hat correct?
2	A	Absolutely.
3	Q	How did you know that?
4	Α	Just by the transactions in the account.
5	Q	And these transactions you assume were in
6	violation o	f some SEC violation?
7	A	That is right.
8	Q	And that is why you took it?
9	A	Yes.
€100	Q	Would these transactions be violations if it
ۆ	was a tradi	ng account?
EE2	A	Probably not.
13	Q	What is a trading account, Mr. O'Brien?
14	A	Purchase and sale of securities for the risk
15	of the firm	
16	Q	Were there trading accounts at Weinberg, Ost
17	& Hayton?	
18	A	Yes.
19	Q	Approximately how many trading accounts were
20	there?	
21	A	Five.
22	Q	Five?
23	A	Yes.
24	Q	Can you explain, if you reclal, what those
25	trading acc	counts were? That is those five accounts.

2	A You mean who were the traders?
3	Q Yes.
4	A Sidney Weinberg traded Account A, Al Cohen,
5	Trading Account B, and Harvey Doppler Trading Account D
6	wait, A was Sidney Weinberg, B was Al Cohen, C was Dick
7	Gray, D was Harvey Mersky and E was Eddie Finkelstein.
8	There may have been an F or G. I don't think so. If
9	there were they were inactive.
10	Q Are these code letters which represent their
11	trading accounts?
12	A Yes.
	Q With regard to the Sidney Weinberg account,
	is that Sidney Weinberg's personal account?
4	A It was a firm trading account.
16	Q When you say a firm trading account, who were
17	the people who participated in that account?
-	A Funds went into the firm. I assume just the
75	partners.
20	. Q When you say the partners, it was a corporation,
21	you mean the shareholders, is that correct?
22	A Whatever, yes.
23	Q Do you know who the shareholders were?
24	A The only ones I knew about were Ed Hayton,
25	Sidney

•	weinberg, Ost & Hayton?
3	A Yes.
4	Q So this Trading Account A, was the firm's
5	trading account?
6	A Right.
7	Q And the other trading accounts that you
8	delineated would be the firm would participate with a
9	particular trader, is that correct?
10	A That is correct.
11	Q With regard to the trading account, are there
12	any particular earmarks that would point out a trade in
13	the trading account that would be different from the
14	regular customer or house account?
15	· A I don't understand the question.
16	Q Let jive you an example.
•	Did they marge brokerage commissions in the
•	trading account?
40	A No.
•	Q Regular customers account, do they charge
-	brokerage commissions?
22	A Generally.
23	Q I ask you to look at the Selma Feffer Holtz
24	account. Do you have that?
25	A Yes.

1	wip	O'Brien - cross	54
2	A	Do I know where it came from?	
3	Q	Yes.	
4	A	I can only guess where it came from.	
5	Q	Can you guess where it came from?	
6	A	I think this was the missing stock we	are
7	talking abo	out.	
8	Q	Wasn't it indicated to you that it ca	me from
9	a trading a	ccount of Mr. Alvin Cohen?	
10	A	Was it indicated to me?	
11	Q	Yes.	
12	A	No, it was not.	
13	Q	You say there were 50 shares of Metal	lurgical
14	Internation	al that came into the account, correct	?
15	, A	That is correct.	
16	Q	Were they sold?	
17	, A	Yes.	
18	Q	When were they sold?	
19	A.	September 3, 1968.	
20	- Q	Were there 50 more shares of Metallur	gical
21	Internation	nal sold?	
22	A	Yes.	
23	Q	When were they sold?	
24	A	September 19, 1968.	
25	Q	When did they come into the account?	

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A There were 100 received in on September 4th.

I would assume from the statement that 50 were received

for the September 3rd transaction and 50 were long going

into the 19th transaction.

Q I don't understand your answer. Can you explain what you mean by that?

A I think I want to take that back. 100 were received at the account here so that made the account long 50 shares and then another 50 shares were received on September 12th. You had 50 sold and another 50 sold here on September 19th. So it's long in the account.

Q All together how many shares were received into the account in September?

A In September, 150.

Q I believe when you testified about some

Metallurgical International being missing you indicated
there were 100 shares missing, is that correct?

- A I am not sure I testified how many shares --
- Q Do you know how many shares. ?
- A 50 shares were missing.
- O There were 50 shares missing?
- 23 A Yes.
 - Q I see. And there were 150 that came into the account, is that correct?

1	wip	O'Brien - cross 56
2	A	That is correct.
3	Q	It is simply your superstition that 50 out
4	of that 150	might have been the missing stock, is that
5	correct?	
6	A	Yes.
7	Q	If you will, Mr. O'Brien, you said you were
8	the chief ca	ashier. What do you mean by that?
9	A	I was the head cashier.
10	Q	What does that mean?
(3)	A	It was my job to oversee the work performed
654	by the other	people in the firm, the clerical personnel.
13	Q	In other words, you didn't work in a cage
14	with a cash	register or anything like that, is that
15	correct?	
16	A	No, not really.
17	Q	In other words, as the nead cashier you ran
18	the back of	fice, is that correct?
19	A	No.
20	- ′ Q	You were in charge of the clerical personnel,
21	is that corn	rect?
22	· A	Correct?
23	Q	How many clerical personnel were there?
24	A	It varied. You have to tell me what time.
25	Q	In the later part of 1968.

1	qjw	O'Brien - cross 57
2	A	50 or 60 people.
3	Q	And you supervised their activities, is that
4	correct?	
5	A	Basically, yes.
6	Q	Was this a busy period of time in this particular
7	firm and in	Wall Street in general?
8	A	Yes.
9	Q	Did you work weekends?
10	A	Yes.
11	Q	Did you work nights?
12	A	Yes.
13	Q	Would you say this probably was the most
14	hectic perio	od of time in your experience on Wall Street?
15	• А	Yes.
16	Q	Was it very common that personnel would leave
17	one firm and	d go to another firm?
18	A	Yes.
19	Q	Were people inducing people to leave other
20	firms and h	iring people away from other firms?
21	A	Yes.
22	Q	Was it indicated that anybody in the back
23	officewi	thdrawn.
24		Was there ever any conferences where any of
25	the partner	s were present concerning any people either coming

		49a
1	wtp	O'Brien - cross 58
2	in or leavi	ng Weinberg, Ost & Hayton?
3	. A	I don't understand. Of course, sure.
4	Q	Were they?
5	A	Yes.
6	Q	Were you present at those conferences?
7	A	Yes.
8	Q	Were there any discussions about how to keep
9	personnel i	n the firm?
10	A	Yes.
	Q	Was there any discussion about bonuses to
	be paid to	personnel?
13	, A	Yes.
14	Q	Is it fair to say that around that time, the
15	latter part	of'68, there was a lot of talk on Wall Street
16	about the s	ize of bonuses that some of the firms were
17	paying?	
18	, A	I would assume that is true, yes.
19	Q	And some of the firms were in fact paying
20	bonuses whi	ch were in excess of the actual salaries of
21	employees a	t that time, isn't that correct?
22	A	There were very good bonuses being given out
23	in Wall Str	eet. I don't know what anybody else was giving.
24	Q	Some such similar types of discussions took

place at this firm, Weinberg, Ost & Hayton, is that correct?

Q

		520	
1	wip	O'Brien -cross	61
2	Q You kn	new Mr. Ost was one of the	shareholders
3	and one of the par	tners of the firm, right?	
4	A That i	s correct.	
	Q And yo	u laid this down as a con	dition for you
•	staying?		
•	A It mig	ht have been a threat lik	e that, yes
8	It's possible.		, , , , , , , , , , , , , , , , , , , ,
9	Q Did yo	u threaten to take any ot	her people
10	with you?		1 '
11	A Where?	No.	
12	Q At thi	s meeting where these con	ditions were
13	laid down how many	people do you recall were	e present?
•	A I don'	t recall. I think there	were a couple
-	of people there.	It might might have one o	r two of my
78	subordinates with	me.	
17	Q You bro	ought some other people un	nder you from
18	the back office wi	th you?	
19	A Yes.		
	- Q Was the	ere any discussion at that	meeting
Op	concerning bonuses		
-	A I thin	there was.	
7	Q Was it	indicated at that meeting	unless your
2	conditions were met	t you would leave and poss	sibly some other
2	key personnel would	leave?	

1	qjw O'Brien - cross 61-A
4	A Maybe so, yes.
3	Q You did eventually, is that correct?
4	A Yes.
•	Q At the time of that meeting did you know you
GE	had plans to leave?
-	A I doubt it.
. 8	Q Was there a check writing machine at the firm
9	of Weinberg, Ost & Hayton?
10	A Yes.
11	Q Was there such a machine in 1968?
12	A Yes.
13	Q What was machine used for, any particular
14	purpose or did it have a general purpose?
15	A I think it was a signature machine if this is
16	the one we are talking about.
17	Q That is what I am referring to.
18	A Yes, it had Harvey's signature on it, a plate
19	for his signature.
20	Q In other words, it was necessary for Mr. Ost
21	to sign a check in pen and ink, is that correct?
22	A That is correct.
23	Q And this machine had a facsimile of his signature?
24	A Yes.
25	Q As I say, was it used for any specific checks

1	wtp	O'Brien - cross 62
2	or generall	y used for all checks?
3	A	Not all checks, no. Not all checks. I wouldn
4	say specifi	c checks either but not all checks.
5	0	But they could come from any particular
6	category?	
7	A	Yes.
8	Q	Sometimes Mr. Ost might write a check by hand
9	and another	time he would write it by machine, is that
10	correct?	
11	A	Yes.
12	Q	When it was done by machine did you ever use
13	that machin	e?
14	A	No one else used that machine.
15	. Q	You never used it?
16	A	No one else used that machine.
17		MR. WILE: Your Honor, can we take a break?
18		THE COURT: Sure.
19		(Recess)
20	- 0	Mr. O'Brien, do you want to turn to the
21	blotter date	ed October 18th where I believe you indicated
22	the distrib	ution of the bonds, is that correct?
23	A	It was the 22nd.
24	Q	Page 19.
25		Indicating the distribution of the bonds, I

1	wtp	O'Brien - cross	63
2	believe you	indicated that a Mr. Cohen got three of	the
3	bonds, is t	hat correct?	
4	A	That is correct.	
5	Q	And the other three bonds, each one were	to to
5	Mr. Ost, Mr	. Hayton and Mr. Weinberg, they each got	one
7	bond a piec	e, is that correct?	
8	A	That is correct.	
9	Q	Is that the typical way a trading account	t
10	would opera	te, where there was a trader and a firm o	combine
11	in it?		
12	A	I don't understand the question.	
13	Q	In other words, this was Mr. Cohen's tra	ding
14	account, was	sn't it?	
15	, А	Yes.	
6	Q	These bonds were sold.	
17	A	Yes.	
	Q	It was split 50/50, Mr. Cohen got half o	f the
	proceeds and	the firm got half of the proceeds?	
0	- A	Are you asking me is this a common way -	-
1	Q	Yes, is this the way trading accounts we	re
2	handled?		
3	A	No.	
4	Q	It was not?	
5	A	No.	

	d)M	O'Brien - cross 64
2	Q	This was an oddball
3	A	No, that is not the way.
4	Q	Is this an oddball type of trade?
5	A	Yes, this is a distribution.
6	Q	But where Mr. Cohen would trade in his account
7	wouldn't he	participate on a 50/50 basis with Weinberg,
8	Ost & Hayto	n?
9	A	Yes.
10	Q	Three bonds to Mr. Cohen, three bonds, one to
11	Mr. Ost, on	e to Mr. Weinberg and one to Mr. Hayton?
12	A	Yes.
13	Q	This is typical of the way the trading account
14	was done?	
15		THE COURT: Wouldn't the monies go to the
16	firm instea	d of the individual on a trading account?
17		THE WITNESS: Yes.
18		THE COURT: Here the monies go to the individual
19	in effect?	
20	•	MR. GALLOP: I am getting to that.
21		THE COURT: Maybe I arrived too soon. I will
22	withdraw the	e questions.
23	Q	These particular bonds, one bond went to each
24	of the indi	viduals?

- - I don't know what is a stock trade? A
 - Q I don't know.

22

23

24

- I don't know what it means. A
- It has nothing to do with the bonds? Q
- I don't know. This is an entry I never saw A

1	qjw	O'Brien - cross	66
2	before. The	is is not a bookkeeping entry.	
3	Q	Have you had an opportunity to examin	e this
4	page prior	to your testifying?	
5	A	Yes.	
6	Q	Was this page the same as it was when	you
7	previously o	examined it?	
8	A	Yes.	
~	Q	I see there is an indication of an Oc	tober
20	22nd sale,	5,000 as per HJO but isn't it indicate	d as a
	sale of sto	ek?	
*	A	No. It's indicated as a delivery of s	tock.
•	Q	I mean a delivery of stock.	
8	A	Right.	
4	, Q	You are saying it is wrong, it is rea	lly a
0	delivery of	bonds?	
-	A	It's a delivery of bonds. That is who	at it is.
48	It's a deliv	very of bonds.	
45	Q	Do you know why the word stock is the	ie?
20	- A	I don't know why the word stock is pu	t there.
21		THE COURT: What exhibit number have	you
22	been talking	about?	
23		MR. GALLOP: Exhibit 15.	
24	Q	Is it possible that somebody in the b	ack office
25	incorrectly	put that designation there?	

1	wtp	O'Brien - cross 67
2		MR. WILE: Objection.
3		THE COURT: Sustained.
4	Q	What was the condition of your back office
5	during the	latter part of '68?
	A	In pretty bad shape.
7	Q	When you say "pretty bad shape," could you be
8	a little mo	ore specific?
9	A	We were behind in our records.
10	Q	Excuse me?
11	A	Our recordkeeping was behind.
12	Q	Badly behind?
13	Α -	Yes.
14	Q	Was there a tremendous amount of paperwork
15	that had no	t been done?
16	A	Yes.
	Q	Who was supervising that paperwork?
	A	I was.
19	Q	At this time was the exchange shortening
20	the hours t	hey were open in order to facilitate the firm?
21	A	Yes.
22	Q	Were certain trading days suspended in order
23	to facilita	te?
24	A	Yes.
25	Q	Between October and the 1st of the year, did

		60a
1	wip	O'Brien - cross 68
2	the with	drawn.
3		Between October and the time you left the
4	firm did yo	u catch up on your paperwork?
5	A	No.
6	Q	Isn't it true that many of the entries you
7	say should	have been made on the same day may in fact not
8	have been m	ade on the same day?
9	A	Yes.
10	Q	It may have been made many days later?
11	A	Yes.
12	Q	Is it fair to say there was not as much super-
13	vision as t	here ought to have been because of the tremendous
14	volume of w	ork?
15	· А	Yes.
16	Q	And during this period of time was that the
17	period of t	ime that Mr. Ost was no longer coming to the
18	back office	
19	A	No.
20	- Q	He was coming back again?
21	A	Yes.
22	Q	How long did he stay out?
23	A	It never got to that.
24	Q	He didn't really stay?
25	A	No, he didn't. It never got to that.

1	wtp	O'Brien - cross 69		
2	Q	You mentioned Sidney Weinberg. Who is Sidney		
3	Weinberg?			
4	A	A partner in the firm and a trader.		
5	Q	You said he was the trader of the company.		
6	What do you	mean by that?		
7	A	He traded securities separating it from a		
8	trader like	Al Cohen who gave 50 percent of his profits		
9	to the firm	, Sidney Weinberg, 100 percent of the profits		
10	went to the	firm.		
11	Q	He traded for the firm account?		
12	A	Yes.		
13	Q	Did he have his own personal account?		
14	A	Yes.		
15	, Q	He had a personal account and when you refer		
16	to him as a	trader, you mean the trades he made in the		
17	trading account were for the benefit of the firm?			
18	A	Right.		
19	Q	Was Mr. Ost trading?		
20	- A	He filled in once in a while for Mr. Weinberg,		
21	yes.			
2	Q	Besides filling in for Mr. Weinberg, was he		
3	a trader fo	r the company?		
4	A	You mean did he have a trading account?		
-	Ω	Did he run a trading account like Mr. Weinberg		

1	qjw	O'Brien - cross	70
2	ran a trad	ing account?	
3	, A	No.	
4	Q	Did you supply Mr. Wile with a bl	otter entry
5	for the Fe	ffer accounting?	
6	A	Yes.	
7		THE COURT: Would you have that	marked.
8		MR. WILE: It is in evidence. Yo	u can mark
9	it 5-A for	convenience.	•
10		THE COURT: All right, 5-A.	
11		(Government's Exhibit 5-A marked	for
12	iden	tification)	
13	Q	Did you ever supply Mr. Wile with	that particular
14	page?		
15	, A	Yes.	
16	· Q	Did you have this page in your pos	ssession?
17	A	No.	
18	Q	How did you come to indicate to Mi	r. Wile
9	anything ab	oout this particular page?	
20	- A	This was in the books and records	of Weinberg,
21	Ost that we	ere being gone through by the Inter	rnal Reveneu.
2	Q	Did you point out anything to him	on this
23	particular	page?	
4	. А	To Mr. Wile?	
5	Q	Or to anybody at the Internal Reve	enue Service.

1	63a				
	O'Brien - cross 71				
2	A I pointed out this particular trade.				
3	Q And did you make the circles a ound the trade?				
4					
5	Q Is that your handwriting?				
6	A Yes.				
7	Q When did youwrite these on this page?				
8	A When did I write that?				
9	Ω The circles, when did you draw the circles?				
10	A Around April 13th, 14th.				
11	Q Of what year?				
12	A '75.				
13	Q This year?				
14	A Yes.				
15	. Q This is a transaction which took place in the				
16	Selma Feffer Holtz account, is that correct?				
17	A Right.				
18	Q Under the commission column, what is indicated				
19	as the commission paid?				
20	- A Nothing.				
-	Q And is that similar to the type of entry that				
•	would be made in a trading account?				
200	A That is similar to the type of entry made in				
24	a trading account, yes.				
25	O The tax would still be paid in a trading account,				

1	qjw	O'Bri	en - cross	72	
2	is that c	orrect, and tha	t would be the sta	te tax and is	
3	it paid i	n the Selma Fef	fer Holtz entry?	Is there an	
4	indicatio	there?			
5	A	Yes, the sta	te tax is paid.		
6	Q	When you lef	t the firm did you	take any of	
7	the documents with you?				
8	A	Not that I c	an recall, no.		
9	Q	Excuse me?			
10	A	Not that I c	an recall, no.		
11	Q	The only this	ng you took was the	e trades in the	
12	Selma Fef:	er Holtz accoun	nt up until the tir	me you left,	
13	is that co	rrect?			
14	A	As far as I	can remember, yes.		
15	. Q	And that acco	ount had not been o	closed prior to	
16	your leaving, is that correct?				
17	A	That is corre	ect.		
18	Q	How many sale	esmen did Weinberg,	Ost & Hayton	
19	have durin	g this period o	of time?		
20	- A	Including par	rt-timers quite a f	lew.	
21	Q	Would you say	in excess of 100?	•	
22	A	Probably arou	and there.		
23	Q	When yousay	part-timers, what d	lo you mean by	
24	part-time	salesmen?			
25	A	They may come	in once a month,	a week, maybe	

MR. GALLOP: Yes, sir.

1	qjw O'Brien - cross 74	
•		
2	(Recess)	
3	Q Mr. O'Brien, getting back to this meeting	
4	where you received these two checks from Mr. Ost, do you	
5	recall if anybody else was present?	
6	A It's possible that Mr. Weinberg was present.	
7	I am not that sure though.	
8	Q Do you recall if Mr. Schwinger was present?	
9	A He might have been but I am not sure.	
10	Q Do you recall if either you or Mr. Schwinger	
11	ever left the presence of Mr. Ost during that period of	
12	time?	
13	A If we ever what?	
14	Q Left Mr. Ost during that period of time.	
15	, A I don't understand the question.	
16	Q Where did this meeting take place?	
17	A At Mr. Ost's office.	
18	Q Was it just one room his office or was it	
19	several rooms?	
20	- A One room.	
21	Q Was there a room nearby where the records were	
22	kept?	
23	A Not that close. All the records were in one	
24	premises.	

So there was another room where the records were,

- 11	
1	qjw O'Brien - cross 75
2	is that correct?
3	A That is correct.
4	Q Do you recall if you or Mr. Schwinger ever
5	went to that room?
6	THE COURT: During the course of this conver-
7	sation.
8	Q At the time of this meeting, yes.
9	A I don't think so, no.
10	Q Do you recall if Mr. Schwinger went?
11	A I don't know. I don't know if Mr. Schwinger
12	was there.
13	Q Subsequent to this conversation did you ever
14	go to that room?
15	THE COURT: I suppose you are making contemporary
16	with the events though. He actually went there later at
17	some later time.
18	MR. GALLOP: I asked him if he went contemporane-
19	ously and he said no, is that correct?
20	THE WITNESS: Right.
21	MR. GALLOP: I am asking if he went to the
22	record room after this conversation.
23	THE WITNESS: No.
24	Q You never went to the record room?
25	A No.

68a 1 wip O'Brien - cross 76 2 Was this room, this record room that you 3 referred to, in existence at the time you worked at Weinberg, Ost & Hayton? 5 Was the record room in existence --6 At the time that you were an employee of 7 Weinberg, Ost & Hayton. 8 Where the records were kept? 9 Yes. 10 Yes. 11 Q Let me rephrase the question. 12 When you met with Mr. Ost after you say he 13 called you to come up and give you these two checks did 14 that take place at the same premises where you had worked 15 when you were an employee of Weinberg, Ost & Hayton? 16 I met with him in his office. His office 17 was the same office that he had always had . 18 The room where the records were kept, was 19 that room the record room when you were an employee of 20 Weinberg, Ost & Hayton? 21 A No. 22 Yes or no? 23 No. 24 It was not? 0 25 A No. Q What was that room at the time?

CONTURENT DICTORY COURT SCHOOLESS HE CONSTRUCTE

King - direct

qiw

	69a
1	qjw O'Brien - cross 76 -A
2	A The record room that he had at that time
3	when I was there was previously previously it had been
4	someone else's office.
5	Q In response to my question did you go to the
6	record room at the time thatyou met with Mr. Ost and he
7	gave you the two checks, you say you didn't go there, and
3	I asked you how close it was and you indicated to me it
9	was not too close.
10	My question to you is how did you know of the
11	existence of that room at the time of the meeting?
12	A How did I know of the existence of that room?
13	Q Correct.
	A Because to get into his premises you had to
15	walk through the front door. To walk through the front
16	door you had to walk through this office where the doors
17	were open. The doors were open and the records were
18	laying all over the place.
19	Q I had previously asked you about how the
20	Feffer Holtz account began and you said with 50 shares of
21	Metallurgical International.
22	Do you recall that?
23	A Yes.
•	o T think you eneculated that that 50 shares

may have been the 50 percent that you recalled advising

- 1		/00	
1	qjw	O'Brien - cross	77
2	Mr. Ost wer	e missing.	
3		Do you recall ever telling Mr. K	ing that the
4	50 shares w	ere taken out of the company trad	ing account A?
5	A	Pardon7	
6	Q	Do you recall telling Mr. King f	rom the
7	Internal Re	evenue Service that the Feffer Hol	tz account
8	was started	with 50 shares of Metallurgical	International
9	and that st	cock was part of 300 shares that w	ere taken out
10	of the comp	pany's trading account A?	
11	A	I don't recall that.	
12	Q	You have no recollection on that	?
13	A	No.	
14	Q	Did you ever tell Mr. King that	a total of 150
15	shares had	been credited to this account?	
16	A	Repeat the last part of that.	
17	Q	Did you ever tell Mr. King that	a total of
18	150 shares	had been credited to the Selma Fe	effer Holtz
19	account?		
20	- A	That had been received, very pos	sibly, yes.
21	Q	Didn't you indicate that that ca	me out of the
22	company tr	ading account A?	
23	A	Did I indicate that?	
24	Q	Yes.	

I don't know. I don't think so.

71a 1 O'Brien - cross /redirect 78 wtp 2 Q Mr. O'Brien, you indicated that you felt Mr. 3 Ost was very vindictive and hurtful. In the year 1968 up until the time you left 5 had he done anything to you of such a nature that you were 6 concerned about the fact that he was a vindictive person? Not specifically to me but I had seen him do A vindictive things, yes. 9 But nothing to you? Nothing to me, right. Nothing vindictive to A M me. 12 Mr. O'Brien, were you seeing a psychiatrist Q 13 in 1968? 14 A Yes. 15 Did you continue to see a psychiatrist? 0 16 Yes. 17 Are you still seeing one? 18 Sporadically, yes. A 19 MR. GALLOP: No further questions. 20 REDIRECT EXAMINATION 21 BY MR. WILE: 22 Mr. O'Brien, was there a trading ledger for 23 every trading account at Weinberg, Ost & Hayton? 24 Yes. 25 Was there any trading ledger for the Selma 0

I would have to go into the offices of the

2

A

wip

Feffer Holtz account?

3

1

2

A No.

•

Q Were there customer ledger for any of the house trading accounts at Weinberg, Ost & Hayton?

6

A No.

7

Q Are you able to compare the level of salaries

8

paid to clerical help at Weinberg, Ost & Hayton with the

9

general level of salaries prevailing in Wall Street in

10

A Yes.

11

MR. GALLOP: I object to the question.

13

THE COURT: I don't see the relevancy of

14

it frankly.

1968?

15

17

16

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25

MR. WILE: Mr. Gallop was questioning about personnel policy and the competition for back office personnel and hiring people away.

I want to know how Weinberg, Ost & Hayton was paying people, well, poorly, were they paying high salaries or low. Were they losing people or gaining people.

THE COURT: It is a collateral matter but the point of the matter is that there is a simple way of asking it.

Did they lose anything as a result of this

1	qjw O'Brien - redirect 80
2	activity or did they gair, anything.
3	Q Did Weinberg, Ost & Hayton lose employees to
4	other firms that offered them more money in 1968?
5	A Some. Very few but some.
6	Q Did Weinberg, Ost & Hayton attract people
7	from other firms by offering them more money than they
8	were making at those other firms?
9	A No.
10	Q Do you know of any instance in which Weinberg,
11	Ost & Hayton paid a bonus to any employee in order to
12	prevent that employee from leaving for a more highly
13	paying job?
14	A I do but I can't tell you the name of the
15	person because I don't know. I do know that that happened.
16	Q Were there any accounts at Weinberg, Ost &
17	Hayton other than house trading accounts in which commission
18	were not paid for the purchase and sales of securities?
19	A Yes.
20	Q What other kinds of accounts?
21	A Many customers accounts, favored accounts of
22	the firm.
23	Q Do you know where the machine that could
24	reproduce Mr. Ost's signature was kept?

1	wtp	O'Brien - redirect 81	
2	Q	Where?	
3	A	In a locked file on the side of his desk.	
4	Q	What kind of lock was it, did you use a key?	,
5	A	Yes.	
6	Q	Who had the key?	
7	A	Mr. Ost had the key.	
8	Q	What was the name of the successor firm to	
9	Weinberg, O	st & Hayton?	
10	A	Hayton Corporation.	
11	Q	Do you know when Weinberg, Ost & Hayton ceas	e
12	doing busin	ess?	
13	A	I think it was late '69 or 1970. I am not	
14	sure of the	exact date.	
15	, Q	Mr. O'Brien, was it a normal way of doing	
16	business at	Weinberg, Ost & Hayton in 1968 for assets,	
17	securities,	to be taken directly out of a trading account	t
18	and distrib	uted to the partners of the firm and to the	
19	trader oper	ating that account?	
20	•	MR GALLOP: I object to the form of the	
21	question.		
22	A	No.	
23		THE COURT: He has answered it already in an	y
24	event, sust	ained.	
25	Q	Were the traders at Weinberg, Ost & Hayton	

- 1	12-
1	qjw O'Brien - redirect/recross 82
2	compensated for each trade or were they compensated at
3	the end of the period for the net result of their trans-
4	actions?
5	A The latter.
6	MR. WILE: No further questions.
7	RECROSS EXAMINATION
8	BY MR. GALLOP:
9	Q If Mr. Ost was not present who wrote checks?
10	A Who wrote checks?
11	Q Who signed checks?
12	A One of the other partners.
13	Q Was the check writing machine ever used when
14	Mr. Ost was not around?
15	. A I don't think so. That machine was not used
16	that often.
17	Q Do you ever recall the key being left on a
18	window sill?
19	A No.
20	• Q The machine itself being left on a window
21	sill to be used?
22	A No.
23	MR. GALLOP: Nothing further.
24	THE COURT: Who are you employed by now?
25	THE WITNESS: Allstate Maintenance Company.

XX

	1
1	qjw Schwinger - redirect 136
2	in December of '68?
3	Q Yes.
4	A I will need that November 30th work sheet,
5	the one I had before, or the eleven-month statement,
6	either one.
7	The corporation had approximately \$200,000
8	of gross income during the month of December 1970, 1968.
9	MR. WILE: No further questions.
10	MR. GALLOP: No further questions.
11	THE COURT: You may step down.
12	(Witness excused)
13	MR. WILE: The government calls James King.
14	
15	J'AMES KING, called as a witness
16	by the Government, being first duly sworn,
17	testified as follows:
18	DIRECT EXAMINATION
19	BY MR. WILE:
20	Q Mr. King, by whom are you employed?
21	A By the U.S. Treasury Department, Internal
22	Revenue Service in the Manhattan district.
23	Q For how long have you been employed by IRS?
24	A Since 1948.
25	Q What is your position with IRS?

1	qjw	King - direct	137
2	A	Special Agent.	
3	Q	For how long have you been a specia	al agent?
4	A	Almost 26 years.	
5	٥	What is the job of a special agent?	•
6	A	To investigate allegations of income	ne tax
7	fraud.		
8	Q	Have you been the person who has be	en in charge
9	of the IRS	investigation of persons who were	at any time
10	associated	with Weinberg, Ost & Hayton?	
11	A	Yes, sir.	
12	Q	When did that investigation commend	ce?
13	A	February of 1971.	
14		MR. WILE: So your Honor will know	I did not
15	forget, I a	um going to offer Mr. Ost's tax return	n, Govern-
16	ment Exhibi	.t 33.	
17		MR. GALLOP: No objection.	
18		(Government Exhibit 33 received in	
19	evide	ence)	
20	* Q	Mr. King, I am going to hand you Go	vernment
21	Exhibit 33	and Government Exhibit 35.	
22		Have you previously had a chance to	look at
23	those two	ocuments?	
24	A	I have.	
25	Q	Are any of the transactions reflect	ed on

wtp

Government Exhibit 35, the Selma Feffer Holtz account statement, reported on Government Exhibit 33, Mr. Ost's tax return?

- A No, sir. That is the 1968 return, sir.
- Q When were you first told of the existence of an account maintained at Weinberg, Ost & Hayton in the name of Selma Feffer Holtz?

A During the course of one of my visits to the Hayten Corporation in 1972 I met a woman there by the name of Cynthia Chaitowitz.

She for a time, and her husband, shared office space with the Hayton Corporation and she had an office across the hall.

She engaged me in conversation after seeing me there for a while and she told me that certain people from her belief were using nominee accounts at Weinberg, Ost.

- Q In the course of your investigation, did you have occasion to go to the offices of the Hayton Corporation?
 - A I did.
- Q And on the first of those visits did you have a converstaion with Mr. Harvey Ost?
 - A Yes.
 - When was that conversation?

When you returned did you have another conversation

Mr. O'Brien that I did not have in my possession.

24

23

Were any checks payable to Selma Feffer

24

25

Holtz?

None.

	0.0
1	qjw King - direct 141
2	Q I show you Government Exhibit 17.
3	Did you attempt to locate an account in the
4	name of Selma Feffer Holtz in that volume?
5	A I did, yes, sir.
6	. Q Is there such an account?
7	A No, sir.
8	Q Have you also attempted to locate the trans-
9	actions reflected on Government Exhibit 35, the Selma
10	Feffer Holtz account in Gover-ment Exhibits 1 through 9
11	which are the Weinberg, Ost & Hayton daily blotters for
12	the period from September 3, 1968 through November of
13	1968?
14	A Yes, sir.
15	' Q How many such transactions were you able to
16	locate?
7	A We located one transaction on the Selma
8	Feffer Holtz account.
9	MR. WILE: I believe the record will
Ø	reflect that that is shown on Exhibit 5-A which came out
1	of Volume 5.
2	Q Were Government Exhibits 1 'wrough 9 in tact?
3	A No.
4	Q Have you analyzed the missing pages from those
5	volumes?

1	wtp	King - direct	142
2	A	I have.	
3	Q	Have you prepared a chart to demonstr	ate your
4	findings?		
5	A	Yes, sir.	
6	Q	I show you Government Exhibit 37 for	identifi
7	cation.		
8		Is that the chart you have just refer	red to?
9	A	Yes, sir.	
10		MR. WILE: I offer that chart in evi	dence,
11	your Honor.		
12		MR. GALLOP: I have not had an oppor-	tunity
13	to examine	the entries on the chart with that but	subject
14	to that obj	ection I have n o objection.	
15		THE COURT: It will be received subject	t to
16	that condit	ion.	
17		(Government Exhibit 37 received in	
18	evide	nce)	
19		MR. WILE: I will give you the original	al and
20	let Mr. Kin	g work from a copy of it, your Honor.	
21	Q	Please explain the chart to Judge Cann	nella.
22	A	This chart shows in the first four les	t-hand
23	columns the	blotter number, the date, a missing pa	ige or
24	a missing s	heet of the blotter plus the page number	r that
25	is missing	from the blotter for each and every dat	e that

1	qjw King - cross 144
2	CROSS EXAMINATION
3	BY MR. GALLOP:
4	Q Mr. king, the room that you say you obtained
5	these 100,000 or so checks, where was that room located?
6	A At the tenth floor of 52 Broadway. It was
7	separated from the offices of the Hayton Corporation in
8	1972 and 1971 also, sir.
9	Q Would you pass by that room on your way into
10	the offices of Hayton?
11	A Yes, sir, it was two doors from the Hayton
12	offices on the left-hand side of the hall.
13	Q Was that room or did that room have a lock
14	on the door?
15	A Yes, sir.
16	Q Based upon your experience was it generally
17	kept locked?
18	A Yes, sir.
19	Q Were you provided with a key?
20	- A Yes, sir.
21	Q When you would leave the room would you lock
22	the room?
23	A Yes, I would.
24	Q. At all times before you would enter the room
25	would you have to unlock the door in order to gain entrance

- "

A I would have to go into the offices of the Hayton Corporation and either see Mr. Ost, Mr. Kansler or one of the ladies in the room to obtain the key.

Q Did you ever have occasion to see the door simply ajar, the room open?

A I believe so, yes.

Q Did you ever keep the key for any period of time?

A After hours -- the people at Weinberg, Ost went home usually at 4:00 o'clock or so and there were occasions when I and another agent or myself alone would stay there and work until maybe 7:00, 8:00 o'clock at night. There were several occasions like that.

Q What would you do with the key when you would leave?

A Drop it in the mail opening for packages or bulk mail in the door of the Hayton Corporation.

Q Was there anyplace where a key was kept to his door that you know of?

A It was kept -- every time I saw the key or somebody gave it to me it was either in the desk of a girl there o. in the desk where Mr. Kansler had a desk.

Q Did you ever pick up the key yourself without having it handed to you?

1	qjw	King - cross 146
2	A .	No, sir.
3	Q	Were you given complete access to any records
4	that you re	equested?
5	A	Yes, sir.
6	Q	At the time you originally requested the oppor-
7	tunity to	look at these records you had not warned Mr. Ost
8	of his righ	nts or anything, had you?
9	A	No, sir.
0	Q	He was not under investigation, is that
1	correct?	
2	A	That is right.
3	Q	You didn't say anything which led him to
4	to believe	he might be the subject of an investigation,
5	did you?	
6	A	No, sir.
7	Q	He gave you full access to whatever you wanted,
8	is that cor	rect?
9	A	That is right.
0	- Q	Looking at the Selma Feffer Holtz account,
1	Mr. King, d	id you ever have the opportunity to analyze
2	whether the	re were any profits or losses on the trades?
3	A	Yes, sir, I did.
4	Ω	How many trades are there?
= 1	2	I novem took an actual account before from

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- A From what I have been told it was Sidney Weinberg.
 - Q Was it his personal account or the firm account?
 - A It was a firm account, sir.
 - Q So you were told by Mr. O'Brien, isn't that correct, that the original 50 shares which funded that account at the outset came from the firm trading account, trading account A, isn't that correct?
 - A That is right.
 - Q He also indicated that a total of 150,000 shares had been traded in this account of Metallurgical International --
 - A A total of, yes, sir.
 - Q Did he indicate that that other 100 came also from that trading account A?
 - A I believe he told me that, yes, sir.
 - Q Looking at the Selma Feffer Holtz ledger again, are there any commissions deducted on the sales of the stock?
 - were any commissions or whatever might be deducted from this. I would have to look in the blotter to determine that. These are just net prices as far as I am concerned.

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Q I think you can. I don't want you to do
the arithmetic but if you look at the price of the stock
and the net price you can see that just the tax was
deducted and that there was no commission deducted.

A Right, sir.

Q Also did you analyze this account to determine when the trades took place, on what days they took place?

A The dates are shown here.

Q Do almost all the trades taken place on the same day, what I mean by that is the buy and the sell?

A Yes, sir.

Q When did that account open?

A From here it appears -- I can hardly read the date but it looks like September 3rd of 1968.

Q Do you know when the account closed?

A No, sir.

Q You came to a conclusion in investigating this case that the funds in this account were the funds which were credited or applicable or creditable to Harvey Ost personally, is that correct?

A That is right, sir.

Q Trying to look at this account to see whether it was a customer's accountor a personal account, did the fact that all the trades took place on one day indicate to you whether or not this was a customer's account or

The fact that there were no commissions charged,

No, sir.

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did that lead you to make any further inquiry as to whether it was a trading or a customer's account?

A No, sir.

Q Did the fact that it seemed to have a very short life span from October and just continued for a few months I believe into November, did that lead you to inquire whether it was a customer's account or a trading account?

A No, sir.

Q Did the fact that every trade generated a profit lead you to make any inquiry as to whether or not it was a customer's account or a trading account?

A No, sir.

Q Did it seem peculiar to you that a man could make a profit on every trade he made in his account?

A From my investigation, sir, during the course of the investigation in the Weinberg Company of various individuals very few of these people ever lost any money in any trades. There were some but not many. Most trades were profitable to the people who were running the accounts.

- Q Not 100 percent, were they?
- A No, sir.
- Q Sidney Weinberg, the A account, was every

It could be either his or his wife's.

1	wtp	King - redirect/recross 155	
2	Q	In any event, it's not on the tax return, is	
3	it?		
4	A	No, sir.	
5	Q	Government Exhibit 19, an account under the	
6	name of Sel	ma Holtz, any commissions charged on the trades	
7	of that acc	count?	
8	A	No, sir.	
9	Q	I put another book up there. Would you take	
10	a look at a	in account in the name of June Hayton?	
11	A	Yes, sir	
12	Q	Do you see any commissions charged there?	
13	A	No, sir.	
14		MR. WILE: If your Honor wants we can go	
15	through Joa	n Weinberg and there are no commissions	
16	charged on	that either.	
17	RECROSS EXA	MINATION	
18	BY MR. GALLOP:		
19	Q	Did you analyze the Selma Holtz account?	
20	- A	Yes, sir.	
21	Q	Did you analyze all the trades in that	
22	account?		
25	A	Yes, sir.	
24	Q	Were they all reported on the tax return?	
25	A	I would have to check my report again or my	

	96a
1	qjw King - recross 156
2	papers. I believe there were four or five minor trans-
3	actions that were in the Selma Feffer Holtz account that
4	were not reported in the 1968
5	Q Didn't you indicate that they could not be
6	checked out because of a lack of records
7	A At that time. I believe that was my grand
8	jury testimony, sir?
. 9	Q Yes.
10	A Subsequent to that time we were able to obtain
11	the ledgers and we were able to check them out.
12	Q Were they all profitable trades?
•	A Those were losses, sir. There were a few
•	small losses. There might have been over \$135,000
	net.
•	Q All the trades reported, were they all profitable
4	· A No.
18	Q In looking at the ledgers from the other names
19	mentioned to you, were they all profitable trades?
20	- A W hich are you talking about?
21	Q I believe the wifes of the other partners in
22	the firm.
23	A I didn't analyze those accounts, sir.
24	I dan t diday to those decounts, siz.

1	wtp	King - redirect	157		
2	REDIRECT EX	AMINATION			
3	BY MR. WILE	BY MR. WILE:			
4	Q	In the course of your investiga	ation, did you		
5	form an opi	nion as to the reason why all the	ne transactions		
6	in the Selm	a Feffer Holtz account were pro	fitable?		
7		MR. GALLOP: Objection.			
8		THE COURT: Sustained.			
9	Q	Mr. King, are you familiar with	n procedures		
10	of brokerag	e houses?			
11	A	Not in total, sir.			
12	Q	Are you familiar with some of	their procedures?		
13	A	Yes, sir.			
14	Q	What is the first document fil	led in by a		
15	trader when	he executes a trade?			
16	A	It would be a guy or sell tick	et.		
17	· Q	And order ticket?			
18	A	Right.			
19	Q	How does one know from the ord	er ticket whether		
20	fhe trade i	s for a trading account or whet	her it's for		
21	a customer	account?	•		
22	A	A name would be on the ticket	or should have		
23	been on the	ticket.			
24	Q	Is it possible that if that na	me is left		
25	blank at th	e end of the day one could matc	h up a buy and		
	a sell that	was profitable and fill in the	name of an accoun		

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

	708
. 1	qjw King - redirect/recross 158
2	that one wanted to make a profit for the day?
3	A Yes, sir.
4	MR. WILE: No further questions.
5	THE COURT: As I understand it I have given
6	him
7	MR. WILE: Except for two small portions which
8	I blacked out in the Court's copy. I gave him the Court's
9	copy of the 3500 material.
10	THE COURT: We have to put the part blacked
11	out in an envelope and seal it.
12	MR. WILE: Okay.
13	THE COURT: The clerk of the court is
14	directed to make it a part of the record. The exhibit
15	number is what?
16	MR. GALLOP: 3503-B.
17	THE COURT: 3503-B has been tuxned over in
18	toto except for the part which will be put in the sealed
19	envelops and made part of the record.
20	RECROSS EXAMINATION
21	BY MR. GALLOP:
22	Q Mr. O'Brien told you that the Selma Feffer
23	Holtz account was not kept with the customer accounts, is
24	that correct?

That is right, sir.

| 3.

MR. GALLOP: No further questions.

THE COURT: You may step down.

(Witness excused)

MR. WILE: Your Honor, there is one final stipulation which basically involves the tax rates in effect for 1968.

The stipulation is that allowing the Court to take judicial notice of those tax rates and based on the amount of unreported income that the government claims to be the case here the additional tax liability would be \$13,848.10.

THE COURT: I wonder, who did that for you?

MR. WILE: A man named Buchbinder from the

Regional Council's office.

THE COURT: Can he split these up into the various amounts involved here and if I exclude one of the amounts can he tell me what the income would be? Suppose for the sake of argument I accept his explanation which I know is forthcoming namely that they were taking them for the rent of the house because the accountant told them that was so, that would be 21, 21 and possibly another third.

Could he give me a figure if I don't accept that?

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Cohan-direct

2 MR. GALLOP: I call Mr. Jerome Cohan ' the 3 stand.

> COHAN, called as a witne by the JEROME defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GALLOP.

- Mr. Cohan, where do you reside?
- A In Merrick, New York.
- Do you know the defendant Harry Ost? . 0
- Yes, I do A
- 13 Do you live nearby him?
 - A Yes.
 - Can you explain just the relationship of your two homes?
 - Our homes are basically back to back.
 - How long do you know the defendant, Mr. Ost?
 - I would think about 13 years.
 - Does this go back through the year 1968?
 - Yes.
 - At that time did you live in the same house as you are living in now?
 - Yes.
 - Are you socially friendly with Mr. Ost?

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Have you continued to be friendly with him throughout the years?

Yes.

Yes.

Did there come a time in the summer of '68 when you had a discussion with Mr. Ost concerning a loan to his firm Weinberg, Ost & Hayton?

A Yes, I did.

Can you tell me what circumstances led to your discussing that loan?

Well, prior to the summer my mother had passed away and I was an executive for the estate, and we did have a certain amount of money to invest. I had spoken to Mr. Ost in regard to certain investments, and we left it that way.

Did there come a time that a loan was actually made to the firm ofWeinberg, Ost & Hayton?

Yes, a little further into the year we got down to a discussion and he wanted to know whether parhaps we would Tike to make a better return on our money by investing some money into the corporation of Weinberg, Ost. -

Do you recall approximately when the money was actually loaned to the firm of Weinberg, Ost & Hayton?

I think it was December 8th or December 3rd, 1968.

		102a	4 70
1	qb-3	. Cohan-direct	172
2	Q	How were the funds turned over?	
3	A	It was in the form of a check dra	wn on the
4	estate of S	adie Cohan.	
5	Q	Is Sadie Cohan the estate of which	h you were the
6	executor?		
7	A	Yes.	
8	0	I show you a photostat of a check	dated December
9	3, 1968, and ask you if this is the check which you turned		
10	over to Mr.	Ost pursuant to those discussions	?
11	A	Yes.	
12		MR. GALLOP: I offer the check in	n evidence.
13	5-	MR. WILE: No objection.	
14		(DefendantExhibit C was received :	in evidence.)
15		THE CCURT: What is the amount?	
16		MR. GALLOP: Dated December 3, 1	968, in the sum
17	of \$100,000.		
18	Q	Was the sum of \$100,000 the figure	that you
19	agreed upon	with Mr. Ost that you would loan	to the firm?
20	- A	Yes.	
21	Q	Do you recall what the interest wa	as that was pai
22	on that obli	igation?	
23	A ·	Yes, the interest was 9 per cent p	per annum.
04	•	How long a newtod of stme wire that	money loamed

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for?

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1	qb-4 Cohan-direct
2	A It was loaned for a period of 13 months.
3	Q Was that loan extended?
4	A Yes, it was.
5	Q As a result of extending it were there any change
6	in the interest payment?
7	A The interest on the loan was increased to,
8	I believe, 10-1/2 per cent over the 9 per cent.
9	Q Did you enter into an agreement extending this
10	loan and increasing the interest?
11	A Yes, we did.
12	Q I show you an agreement dated December 29,
13	1968, and ask you is this the agreement that you entered int
14	between Weinberg, Ost & Hayton and your mother's estate?
15	. A Yes.
16	MR. GALLOP: I offer it in evidence.
17	(Defendant Exhibit D was marked for
18	identification.)
19	VOIR DIRE EXAMINATION
20	-BY MR. WILE:
21	Q This document is not complete of itself, is it?
22	Doesn't it incorporate by reference another document?
23	A It does.
24	Q That is the prior agreement, the original loan?
25	A That is correct.,

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1	qb-5 Cohan-direct 174
2	Q Do you have that with you?
3	A I believe I do.
4	Q This is a copy of that?
5	A Yes.
3	MR. WILE: My only objection is that we need
7	both halves to understand the thing. If he is going to offer
8	both, I have no objection to it.
9	MR. GALLOP: If the witness has the original
10	agreement, I have no objection to offering it.
11	THE WITNESS: I would have the original in my
12	file. I wouldn't have another copy with me.
13	MR. WILE: I am willing to take that representa-
14	tion and admit the copy.
15	THE COURT: That will be marked D1 and D2.
16	The agreement, the original, is D1 and the copy is D2.
17	(Defendant Exhibits D1 and D2 were received
18	in evidence.)
19	BY MR. GALLOP:
20	- Q Mr. Cohan, was this loan repaid?
21	A Yes, it was.
22	Q How many installments was it repaid in?
23	A Two installments.
24	Q Do you recall approximately when the first
25	installment took place?

ì	qb-6	Cohan-direct . 175
2	A	December 11970.
3	o	How was the first, or what amount was the first
4	installment	7
5	A	\$50,000.
6	. 0	Was that paid by cash or by check?
7	. A	It was paid by a check.
8	Q	Was it a bank check, a cashier's check?
9	A	A cashier's check.
10	Q	Do you recall what bank it was from?
11	Α	I believe it was Greenwich Savings Bank.
12	Q	How was the second payment made?
13	A	The second payment was paid by check by Weinberg
14	Ost & Hayto	n.
15	. 0	Was this a bank check or a corporate check?
16	A	A corporate check.
17	0	I show you a photostat of a check dated
18		MR. WILE: Can we have the date of the second
19	payment?	
20		MR. GALLOP: I am going to do it this way.
21	Q	I show you a photostat of a check dated February
22	18, 1971, a	nd askyou is this the check that comprised t'e
23	second paym	ment of the loan?
24	Α	Yes, it is.
25		Below that there is a photostat of another check

dated the same day in the sum of \$656.25. Can you tell us what that check is?

A This was the final interest on the loan from January 1 through February 18, the date the loan was finally repaid.

MR. GALLOP: I offer these two checks in evidence.

MR.WILE: Objection. Best evidence rule.

THE COURT: He testified that he repaid it.

seems to me this is surplusage, unless the Government

contests it.

MR. WILE: As your Honor knows, we have had a problemin this case in that most of the records of the corporation have been destroyed, including the canceled checks. I see no reason why I should waive an objection on the best evidence rule ancheck unless we have some testimony as to why they can't produce the original.

THE COURT: Lay a foundation for it.

- Q Mr. Cohan, did I ask you to produce the original of the February 18 check in the sum of \$15,000 or rather \$50,000?
 - A Did you ask me to produce the original?
 - Q Yes.
 - A I wouldn't have the original.

1	qb-8 Cohan-direct 177
2	Q But I requested that of you?
3	A I don't see how you could. This is a check
4	when it was dated it would go through the bank.
5	Q If you recall about a week ago we met and I
6	asked you if you could obtain the original of the check
7	in the sum of \$50,000 from the estate of Sadie Cohan, payable
8	to the estate of Sadie Cohan.
9	A Could I, no.
10	Q Do you recall me requesting it of you?
11	A A check for \$50,000?
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14	A If I had the original of the check it would not
15	be in my account. It is not a check under my estate. The
	check was from Weinberg, Ost & Hayton.
16	THE COURT: He would never get the original.
17	MR. GALLOP: I agree, I am sorry.
18	Q Mr. Cohan, from whom did you obtain the photostat
19	copy of the check dated February 18?
20	A My attorney kept records of it.
21	Q Did he keep this photostat in his records?
22	A Yes, this is one of his records.

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That was a check on the Greenwich Savings Bank? 0

Correct.

That was a bank check?

That is correct.

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE FOLEY SOUARE. NEW YORK. NY. - 791-10:0

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MR. WILE: If there is a copy of that check I have no objection to that one going in.

MR. GALLOP: I have the customer's copy of that check, a check of the Greenwich Savings Bank.

MR. WILE: I have no objection to this check, just the Weinberg, Ost & Hayton check.

THE COURT: We are talking about a \$50,000 check?

MR. GALLO:: Correct.

THE COURT: Dated what?

MR. GALLOP: The check is dated 10/28/70,
Greenwich Savings Bank check \$1697641, payable to the order
of the Estate of Sadie B. Cohan, in the sum of \$50,000.
This is the customer's copy. I offer it in evidence.

(Defendant Exhibit E was received in evidence.)

Q mhis check, Defendant Exhibit E, the Greenwich Savings Bank check that was picked up by your attorney on -December 8, is that correct?

A I believe it was December 8, yes.

Q With regard to this loan, prior to the date of the repayment of either the \$55,000, the first fifty or the second \$50,000, did you have any conversations with Harvey Ost concerning repayment of the loan wherein he indicated

to you he had put aside cash to pay this loan?

- Yes, he did.
- Did he at any point prior to the repayment of the loan offer you any amount of cash to make any repayment of the loan?
 - Yes, he did.

MR. WILE: I object to this. This is hearsay.

THE COURT: Sustained as to form in any event.

I sustain the objection as to form, and it is also hearsay.

- At some point in time prior to your received the \$50,000 check from the Greenwich Savings Bank, did Mr. Ost offer to pay that installment in cash?
 - He did.
 - Did you accept it?
 - Absolutely not.
 - Did you ask that it be paid by check?
- I said the only way I would receive or accept *payment would be by check.
- And then you were given the Greenwich Savings Bank check in the sum of \$50,000, is that correct?
 - That is correct.

MR. GALLOP: I have no further questions.

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Cohan-cross

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CROSS-EXAMINATION

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BY MR. WILE:

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Why did you turn down the \$50,000 in cash?

I have always been brought up never to deal in cash. I do not deal in cash.

Do you know when the payments of interest commenced on the loan?

Yes. I would say they were paid every three months commencing 90 days from the date of the loan.

So the first payment was roughly February of 1969?

- A Yes.
- Q Were they paid by check or cash?
- By check.
- Corporate check of Weinberg, Ost & Hayton?
- That is correct.

MR. WILE: I have no further questions.

MR. GALLOP: Perhaps I misunderstood the When I asked if he had a conversation with Mr. Ost's attorney, whether or not Mr. Ost advised him that he had put away cash for repayment of this loan, I believe there was an objection by the Court; is that correct?

THE COURT: Not by the Court, by Mr. Wile.

MR. GALLOP: Which was sustained.

1	qb-13 Cohan-cross 182
2	Weinberg-direct THE COURT: Yes.
3	MR. GALLOP: I have nothing further.
4	THE COURT: You may step down.
5	(Witness excused.)
6	MR. GALLOP: I call Mr.Weinberg.
7	I would like to point out to the Court that this
8	loan appears on the corporate tax return for the year 1968,
9	which corporate return is in evidence.
10	SIDNEY WEINBERG, called as a witness by
11	the defense, having been first duly sworn, was examined
12	and testifica as follows:
13	DIRECT EXAMINATION
14	BY MR. GALLOP:
15	. Q Mr.Weinberg, I know you have trouble hearing in
16	one ear, so if you don't hear my questions, just please
17	indicate that.
18	What is your present occupation?
19	A Right now I am an accountant.
20	- Q Were you ever associated with the firm of
21	Weinberg, Ost & Hayton?
22	A Yes.
23	Q Were you the Weinberg in the Weinberg, Ost &
24	Hayton firm?

	1130 . 183
1	qb-14 Weinberg-direct
2	Q Were you associated with the firm in 1968?
3	A Yes.
4	Q What was your capacity in 1968?
5	A As an officer or what I did there?
6	Q First, were you an officer?
7	A I was president of the company, yes.
8	Q What did you do in the firm?
9	A I was a trader, basically. I was a stock trader
10	Q For whom did you trade?
11	A The firm.
12	Q When you say you were a trader, can you explain
13	what you mean by that?
14	A Yes. I made markets in the over-the-counter
15	market for the firm account. For example, I might take
16	a position, by position I mean purchase a stock, with the
17	hopes of later selling it at a higher price. The name
18	of the stocks we made markets in appeared in the daily
19	pink sheets on a daily basis, and firms would call us to
20	-buy and sell those securities. That is basically over-
21	the-counter market making as such.
22	The account which you traded in, how was that
23	designated?
24	A As a firm trading account.
-	

Did it have a title of any sort?

		184
1	qb-15	Weinberg-direct
2	A	You mean like a letter?
3	Q	Yes.
•	A	Trading "A".
5	Q	That was commonly referred to as your trading
	account by	your name, right?
7	A	Yes.
	Q	But it meant the firm trading account?
•	A	Right.
	Q	And the profits in that account, what was done
11	with them?	
12	A	It went into the firm.
13	Q	It went into the corporation?
14	Α	Yes.
15	· Q	And they reflectedin the corporate books and
16	records?	
17	A	Any income I produced in any way whatsoever went
18	into the fi	rm as such.
•	Q	There was another account known as the Selmi Peffe
	*Holtz accou	nt. Are you familiar with that account?
*	A	Yes.
4	Q	Was that a trading account?
23		Yes.
24	Q	Who did the trading in that account?
25	A	I did.

Weinberg-direct

Q You understood as a member of the firm that to be a firm trading account, is that correct?

A Yes.

Q If you can, can you tell me the events in a chronological order which led up to the formation of the second trading account, the Selma Feffer Holtz account?

A Yes. Some time in the fall of '68 I think
we are all aware of the fact that the market was in a frenzy
and it was just wild. There was difficulty getting good
people to work for you in those days, especially for a firm
like ours because we were small compared to the large firms.

It was extremely difficult. One day during that period
of time Jim O'Brien and a whole group of our back office
personnel who were under him demanded a meeting. We did
have a meeting with Ed Hayton, who presided over it basically,
and I was present.

to be in the back office because they felt he put too much pressure on him. They were afraid of him. They thought he harassed them.

Number 2, they requested bonuses from us in cash.

If we refused they threatened to walk out, all of them,
en masse.

After the meeting we had a discussion -- Harvey

At the end of the day I would discuss with Harvey
Ost -- we would segregate the transactions. The ones that
were profitable we would put into the Selma Feffer Holts

record will reflect whether it was the same |

1 qb-1

2 account.

The other ones that were marginally profitable or a loss, we left in the regular trading account.

Q Did you only put profitable transactions into the Selma Feffer Holtz account?

A Yes.

Q What was the reason for that?

A We needed profits in there. It didn't make sense to put losses there. We were trying to develop something.

Q What were you trying to develop?

A Enough cash to take care of the back office basically.

Did you use the money which resulted from this account to pay bonuses or to make any payments to any back office personnel?

A As it turned out, we did not.

Q Did there come a time that you knew Jim O'Brien was leaving the firm?

A Yes.

O About when was that?

A Towards the end of the year.

Q Had you already begun to generate this money in the Feffer Holtz account?

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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We did.

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At that time what transpired, if anything, which led you to decide not to use the money in that account?

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We found out that Mr. O'Brien was going to be leaving the firm and we felt that there wasn't any sense giving out bonuses to somebody who is not going to be there any more.

He was not the only one to receive bonuses, was he?

Pardon?

He was not the only one to receive a bonus.

Basically it was supposed to be for the whole A back.

In any case, you decided not to use the money for any purpose. Was this money earmarked for any other purpose?

Yes.

For what purpose?

During the same period of time Harvey Ost was discussing a possible loan from a neighbor and friend of his, Jerry Cohan, and his brother. He was discussing the possibility of a substantial loan, \$100,000. Ost, because of his relationship with Jerome Cohan, they live right next door to each other, right behind him, he

To your knowledge, was this money ever used

Can you tell us approximately how many back office personnel you had in the latter part of '68?

About 75 or 80.

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How many salesmen did you have?

We had a total of about 135 to 150 salesmen, including full and part time.

You say full and part time. How many full time and how many part time?

penses, they took customers out to dinner, lunches, et cetera, maybe the use of a room in their house which could be considered an expense of the's.

Q With regard to all personnel, not only the part time that may have worked out of their home, but the full time as well, were there any expenses that they would have pursuant to any underwritings which the firm did?

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proper bookkeeping entries?

Did anybody have?

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Q Yes, would any one individual in the firm know specifically at any one point in interpolation, could they know what was going on?

A In every area, I doubt it.

Q If you can give us some idea of the volume, how many customers did you have at that time?

A We were told by the NASD, the National Association of Securities Dealers, that we were the largest over-the-counter retail house in terms of number of accounts in that year. Also at times we were doing 1000 tickets a day. That is more than firms are writing for a month right now.

During those days things were so hectic, I am sure you will all recall that the New York Stock Exchange first started to close at two o'clock every day and then started to close Wednesday completely and order every firm to have their complete staffs in during those periods of time to try to catch up to date because nobody knew what they were doing.

It was a complete disaster.

Q Getting to a disbursement which apparently was made on the books to the three partners, two \$18000 checks for rent out of area, do you recall receiving any money in '68 for rent out of area?

1	qb-27	Weinberg-cross i 196
2	A	To some extent.
3	Q	Do you remember taking a look at a document that
4	was entitle	ed the Selma Feffer Holtz account?
5	A	Yes.
6	0	Do you remember telling me that you never heard
7	of it?	don't hear your answer, Mr.Weinberg.
8	A	I never heard of the account?
9	Q	Do you remember telling me that you had never
10	heard of th	e account, yes or no?
11	A	I am not sure.
12	Q	Do you remember telling me that you didn't
13	remember wh	ether or not you were the trader responsible for
14	the trades	in that account?
15	· . A	I don't remember.
16	Q	Do you remember being told after that meeting
17	that you we	re going to receive a subpoena to testify before
18	the grand j	ury?
19	A	You said I probably would.
20	- 0	Do you remember that?
21	Α	Yes.
22	Q	You didn't go home that weekend, did you?
23	. A	Yes, I did.
24	Q	Are you telling me your house wasn't closed
25	up that wee	kend?

2	the SEC? Answer the question please.
3	A Pardon me?
4	Q Are you subject to a one-year suspension by the
5	SEC?
6	A Yes.
7	Q Didn't you get out of the securities business
8	rather than wait around and hang around and wait for that
9	one year suspension?
10	A I had an opportunity for a job and I decided
11	to take it.
12	Q It had nothing to do with the suspension by the
13	SEC.
14	Mr. Weinberg, are you having trouble understanding
15	me? Am I not talking loudly enough or clearly enough?
16	A Yes, I can hear you.
17	MR. WILE: Mark this Government Exhibit 39,
18	please.
19	(Government Exhibit 39 was marked for
20	identification.)
21	Q Do you recognize that?
22	A Yes.
23	Q What is it?
4	A My tax return for the year 1968.
25	Q Did you, Mr. Hayton and Mr. Ost receive the

2	same amount	of compensation from Weinberg, Ost & Hayton
3	du_ing 1966	3?
4	Α	We may not have.
5	0	Did you get a salary?
6	Α.	Yes.
7	0	Will it refresh your recollection to take a look
8	at the tax	return of Weinberg, Ost & Hayton that year which
9	lists all t	hree of your receiving salaries of \$15,800?
10	Α	Right.
11	Q	Is that your salary from Weinberg, Ost &
12	Hayton for	that year?
13	A	That is what it says.
14	Q	Is it or isn't it?
15	. А	I don't remember. It says so on there, I assum
16	it is.	
17	Q	What is your salary as listed on your tax return
18	λ	21,700.
19	Q	Where did the extra \$5200 come from?
20	- А	It is part of a W-2 I got
21	Q	You don't remember?
22	Α	I really don't. This is 1968 you are talking
23	about.	
24	Q	Did you receive a bond in the corporation called
25	General Elec	etronics in 1968, Mr. Ost?

2	A	You mean Mr. Weinberg.
3	Q	Yes, Mr. Weinberg.
4	A	I probably did. I was told I did, so I am sure
5	I did.	
6	0	Is there any doubt in your mind about it, Mr.
7	Weinberg?	
8	A	That I received a bond?
9	Q	Yes.
10	A	No.
11	. 0	Did you sell the bond?
12	A	Probably.
13	. 0	How much did you pay for the bond?
14	A	I don't remember.
15	. 0	Did you get it for free?
16	A	I don't remember.
17	٥	Your mind is a complete blank on the subject?
18	A	Again you are talking about '68.
19	Q	Yes, it is a long time ago.
20	•	I am showing you Government Exhibit 20 in evidence
21	Take a look	at brokerage account in the name of Sidney
22	Weinberg.	Is that yours?
23	A	Yes.
24	٥	Do you see the receipt of a General Electronics
25	bond on Oct	cober 22nd?

1	qb-32	Weinberg-cross 201
2	A	Yes.
3	Q	Received?
4	A	Yes.
5	Q	What is the price?
6	Α.	There is no price there.
7	Q	You got it for free?
8	A	It looks like it.
9	Q	It looks like it.
10		Let me show you your tax return. See if you
11	can find fo	or me the receipt of that General Electronics bond
12	for free.	
13	A	I don't know when it was sold.
14 .	Q	You received something of value and paid nothing
15	for it, isn	't that income, Mr. Weinberg? You are an
16	accountant,	aren't you?
17	A	I didn't understand you. I don't see it in
18	here.	
19	. 0	You didn't report it.
20	- A	I don't see it in here.
21	Q	Is this your signature on here under "penalties
22	of perjury	I declare that I have examined this return"? You
23	signed that	, didn't you?
24	A	Yes.
25	Q	Let's talk about the Selma Feffer Holtz account,

	129a	
1	qb-33 Weinberg-cross 202	
2	Mr. Weinberg, because even though that took place in 1968	
3	your memory seems to be pretty good about it.	
4	How many trades did you operate in an average	
6	day?	
6	A You mean in total?	
7	Q Yes, how many order tickets did you fill out?	
8	A I really don't remember.	
9	Q Give me a guess.	
10	A I handled customers and trading also.	
11	Q For the firm trading account. You were make	in
12	markets in stocks. That is for the firm trading account,	
13	right?	
14	A Yes.	
15	O How many order tickets did you write a day?	
16	A I can give you an oddball guess, 20, 30.	
17	Q Twenty or ickets?	
18	A It could be more or less.	
19	Q You didn't put allthe profitable trades in the	•
20	Selma Peffer Holtz account, did you?	
21	A I doubt it.	
22	Q Just some of them?	
23	A Yes.	
24	Q Do you know that it is a violation of the	

rules of the SEC and the NASD to maintain a firm trading

130a

1	qb-34 Weinbarg-cross_ 203
2	account in a customer's name?
3	A I didn't know that.
4	Q You didn't know that. That is a sumprise to your
5	A It is.
6	Q Mr.Weinberg, there is nothing wrong, is there,
7	with paying money back that you borrow, there is nothing
8	illegal about that, is there?
9	A No.
0	There is nothing illegal about making profit
1	in a trading account, is there?
2	A No.
3	Q Let me show you the general ledger of your compan
4	for 1968. Show me where the profits made in the Selma
5	Feffer Holtz account appear in that book.
6	A I just answered your questions. I just gave
7	answers to questions earlier that show what happened with
8	the proceeds of the account.
9	Q Did you enter the proceeds in the books of your
0	company? You told me it was a company account. Is it
1	in the books of your company?
2	A No.
3	Q You don't even need to open up the book to
4	know that, do you?
5	A I answered the same questions a few moments ago.

	1310 204
1	qb-35 Weinberg-cross
2	Q The record will reflect whether it was the same
3	question.
4	THE COURT: Do you have a lawyer, Mr. Weinberg?
5	THE WITNESS: Not in reference to this case,
6	no.
7	THE COURT: Well, you know, and I imagine you have
8	been told by your lawyer when you did consult with him that
9	you have a right to refuse to answer any question which will
10	incriminate you.
11	Are you aware of that?
12	THE WITNESS: I didn't discuss it with any
13	attorney. I didn't even think about it, your Honor.
14	THE COURT: You better think about it because
15	you have a right to refuse to answer any question which
16	will incriminate you. If you want time to consult with
17	your lawyer you will be given time to consult with your
18	lawyer.
19	Q Mr. Weinberg, is your wife's maiden name
20	Joan Cooperberg?
21	A Yes.
22	Q Didn't you have a trading account at Weinberg,
23	Ost & Havton in the name of your wife, Joan Cooperberg,

I don't remember, to tell you the truth.

which you never reported on your tax return either?

		132a 205
1	qb-36	Weinberg-cross
2	Q	1968, Mr. Weinberg, same year as the Selma
3	Feffer Hold	z account.
4	A	The Selma Feffer Holtz account was an extremely
5	active acco	ount.
6	Q	Joan Cooperberg, that was your own wife's account
7	but you don	't remember that it wasn't too active, is that it?
8	A	I don't remember.
9	Q	You have training in accounting, don't you?
10	A	Yes.
11	Q	You know a little bit about the tax laws?
12	A	Yes.
13	Q	Did you deduct anything on your tax return for
14	a home offi	ce in 1968? Did you deduct a portion of the
15	taxes on yo	our home?
16	A	Right here.
17	Q	That is the whole thing, isn't it?
18	A	I don't know what the real estate taxes were
19	for that ye	ar.
20	- Q	Did you deduct a portion of your utilities on
21	your tax re	turn for your home office?
22		THE COURT: As I understand his answer that out

that out of area rent, you deducted not out of area rent, but you deducted all the expenses you had because you were doing a lot of business at home, telephone calls and entertaining

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Weinbergg-cross

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people. You never got to the point of claiming the actual rent that you claimed in your house.

THE WITNESS: I don't see anything on here.

- Q For home office?
- A No.
- Q But you did use your home for business purposes?
- A Right.
- Q You passed up that deduction?
- A I didn't deduct it because I was reimbursed.
 Why should I deduct it?
- Q Did you, Mr. Hayton and Mr. Ost get together before you took reimbursement for your out of area offices?
 - A Did we get together?
- Q Did you get together and talk about it before you did it?
 - A To discuss it?
 - Q Yes.
 - A Yes.
- Q Did you decide that the company would pay all of the expenses incurred by each of you?
 - A The ones we just discussed?
 - Q Yes.
- A We felt that the portion we took was an equitable portion to take for reimbursement.

1	qb-38 Weinberg-cross 207
2	Q What were you doing at your home? You were
3	dealing with trading, is that correct?
4	A That was only part of my responsibilities.
5	Q What were you doing at home?
6	A I was also probably the largest retail producer
7	at Weinberg, Ost & Hayton.
8	Q Mr. Ost was the office manager, is that correct
9	A Yes.
10	Q He wasn't the largest retail producer anywhere.
11	A He had his own accounts, but not as big as me.
12	Q How about Mr. Hayton, wasn't he responsible for
13	underwritings and mutual funds?
14	A Yes. He also had his own accounts.
15	Q Do you have any idea why they needed as much
16	money as you did for their out of area offices?
17	A For all I know they needed more.
18	Q. You testified that part of the Selma Feffer
19	Holtz account was earmarked for payments to your back office
20	*employees, is that correct?
21	A I said that was the original intent.
22	Q That was the original purpose.
23	A Right.
24	Q Were those payments going to be made in cash
25	or checks?

expense that I incurred.

Which one?

This one right here, December 20. Q

Bonuses. A

Now go over to the category "office." What does Q

it say?

it say?

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\$11,530.

qb-41 Weinberg-redirect MR. WILE: No further questions. 2 REDIRECT EXAMINATION 3 BY MR. GALLOP: Q With regard to that General Electronics bond, 5 Mr. Weinberg, do you have any present recollection of ever 6 receiving that money? 7 A No, I. do not. Q Is it your testimony that you say you probably 9 received it because you were shown a document that indicates 10 you received it? 11 A No. 12 Q Do you have any recollection of ever selling 13 the bond? 14 A Not any specific bond. I know I sold some 15 General Electronics bonds that I purchased, but I don't 16 remember which ones they applied to. 17 Were there any inaccuracies in the records of 18 Weinberg, Ost & Hayton for this period of time? 19 . A I would say most of the records were probably inaccurate. Q If you can give me an idea by numbers of transactions. 2 Thousands. 24 Q Thousands of transactions? 25

Who accompanied O'Brien to this meeting?

A We discovered later on that not only were they inaccurate, there was stock being sent to customers who had already paid for it and we never got it back. There were accounts that had bought a stock, never paid for it, and we got stuck with the stock which was a complete loss later on when the stocks vanished.

The inaccuracies were so gigantic that it killed the company.

Q Was the firm ever sanctioned for its record keeping?

A It was.

Q So from your own personal knowledge you don't know whether you got the bond and if you did when you sold it, is that correct?

A That is correct.

Q With regard to the cash which had been put aside, it is not your testimony that no bonuses were not paid at the end of the year?

A All I said was no cash was used to pay bonuses.

Q At the time the cash was put aside the amount of bonuses was really dictated by the meeting with Mr. O'Brien? Mr. O'Brien, did he precipitate your putting aside the bonuses?

A Yes.

qb-43 Weinberg-redirect 212
Q When he left did you then change your attitude
toward the amount?
A Right. I want to say one thing.
THE COURT: No. If you want to say something
you go down and tell Mr.Gallop what it is, and if he wants
to ask you he can ask you.
Q With regard to the Selma Feffer Holtz account,
the profits in that account, where would they go?
A The profits went into the account, taken out and
put in a vault.
Q Were they firm profits or were they Mr. Conta

profits?

The profits were firm profits. Not only that, your Honor, I was the one doing all the transactions. All day long I am selling, buying, creating the profits. There is no way in this world after doing all that work I would permit that man to keep all the profits after I am doing all-the work. It doesn't make sense to me.

The money that funded the account, there is some testimony it came out of a trading account "A." Whose trading account was that?

The firm.

Was that firm money that traded the account?

Yes.

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1	qb-44	Weinberg-recross
2		MR. GALLOP: No further questions.
3	RECROSS-EXA	MINATION
4	BY MR. WILE	
5	Q	Do you recognize the trading ledger for trading
6	account A?	Find the shares that started that account.
7		MR. GALLOP: I assume they are not there.
8	٥	Did you change the records of that account?
9	A	No.
10	Q	Who did you have do it?
11		MR. GALLOP: Objection.
12		THE COURT: Sustained as to form.
13	Q	You testified before that you were suspended by
14	the SEC bec	ause of your bad record keeping, is that correct
15	A	I said the firm was suspended.
16	Q	For bad record keeping, right?
17	λ	Part of it was bad record keeping, yes.
18	Q	Was the firm suspended one or more times?
19	A	It was suspended once by the SEC and once by
20	- the NASD.	
21	Q	Which suspension was because of bad record
22	keeping?	
23		Both.
24	Q.	When did these suspensions occur?
25	A	The SEC, I think that was the end of '70. I

1	qb-45 Weinberg-recross
2	am not positive.
3	Q When did your record keeping get bad? Was it
4	bad in 1967?
5	A Yes, it was.
6	C Was it bad in 1968?
7	A Yes.
8	Q Bad in 1969?
9	A '69 was the carry-over from '68. It was a
10	disaster.
11	Q Was your record keeping ever any good?
12	A That is a good question. I don't know the
13	answer. Maybe at the beginning when we first started.
14	(Government Exhibit 40 was marked for identi-
15	fication.
16	Q Mr.Weinberg, do you recognize this document?
17	It says "Securities and Exchange Commisson, in the matter
18	of Weinberg, Ost & Hayton, Inc., " and underneath that ther
19	is a name of Sidney Weinberg and Harvey Ost?
20	λ Yes.
21	Q A finding against your company by the SEC?
22 23	A Right.
24	Q Locate for me where it says you were suspended
_	because of bad record keeping.

xxx

1	qb-46 Weinberg-recross redirect
2	Q Find that one.
3	Did you read the whole thing, Mr. Weinberg?
4	A Not yet.
5	Q Keep going.
6	A I can't find it at a quick look. However, I
7 .	can explain part of the bad record keeping to you that
8	started this.
9	Q Mr. Weinberg, I don't want any of your explana-
10	tions.
11	MR. WILE: I have no further questions.
12	RE-REDIRECT EXAMINATION
13	BY MR. GALLOP:
14	Q I show you a complaint from the NASD.
15	. (Defendant Exhibit F was marked for
16	identification.)
17	Q I show you Exhibit P for identification, a
18	complaint from the National Association of Securities Dealer
19	and call your attention to the allegations on page 2
20	- MR. WILE: I object. The witness testified
21	that both suspensions were the result of improper record
22	keeping and the fact that one of them may have been is
23	absolutely irrelevant at this point in time.
24	MR. GALLOP: If the Government will concede
25	one was, I will withdraw this.

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By letter. Was that trading account "A"? I believe so, yes. Who was the person in that firm who ran that account?

1 qb-49 Hayton-direct 2 A Sidney Weinberg. 3 Did he run it for the benefit of the corporation?. Yes, sir. Are you familiar with an account by the name of 7 Selma Feffer Holtz? Yes, sir. 9 Can you tell us whether or not that was a trading 10 account? Yes, that was a company trading account. 11 12 Can you tell us the events which led up to the 13 formation of that account? Yes. I would say in 1968 we were approached, 15 that is I particularly was approached by our office manager 16 Mr. O'Brien, to conduct a meeting at my office where he 17 appeared with a number of the back office personnel and 18 they discussed with me their wishes that Mr. Ost, who generally supervised the back office, should no longer be permitted in that supervisory capacity. They wanted to run it themselves. They therefore wanted him out of that position. They also wanted cash bonuses which during that year, since it was a very hectic year, was not uncommon to Wall Street.

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MR.W LE: I move to strike the last unless

- 1	1466
1	qb-50 Hayton-direct
2	he can demonstrate personal knowledge of it.
3	THE COURT: Strike the last part.
4	Q Can you tell us what further happened at that
5	meeting?
6	A Well, after they had asked for the cash bonuses
7	and to have Mr. Ost removed from the direct supervision
8	of the back office, after that I met with my associates,
9	Weinberg and Ost.
10	Q As a result did youtake any action as a result
11	of that meeting with the back office personnel?
12	A Yes. We made an attempt to keep Ost out of the
13	back office and we had agreed to pay bonuses to these
	employees, yes.
15	. Q How were you going to generate cash to pay
16	bonuses to these people?
-	A We agreed that we should set up another trading
18	account, a corporate trading account, the profits of which
19	would go to paying the cash bonuses to these employees and
20	we designated that account to Selma Peffer Holtz.
21	Q Who took care of the trades in that account?
22	A Weinberg.
23	Q Do you know what trades were put into that
24	account?
25	A I personally, no.

1	qb-51	Hayton-direct
2	Q	Did there come a time when you actually used
3	these funds	to pay cash bonuses?
4	A	No, not really. Later that year we heard that
5	O'Brien was	going to form his own firm. We therefore deemed
6	it inapprop	riate since he was leaving and probably would
7	take with h	im key office personnel, we certainly didn't
8	want to pay	them bonuses at that time.
9	Q	Did you use that money for any other purpose?
10	A	Yes. That money was eventually used to repay
11	a subordina	ted loan that we had borrowed from a Mr. Cohan
12	or an estat	e from his deceased mother.
13	Q	With regard to the funds in the Selma Feffer
14	Holtz accou	nt, were they maintained in cash?
15	. А	The funds
16	Q	The funds were drawn.
17	A	The funds that had been withdrawn?
18	Q	Right.
19	A	Yes. They were maintained in cash in our
20	-corporate v	ault.
21	Q	Did you ever have occasion to actually see thos
22	funds?	
23	A	I did, yes.
24	. 0	Can you tell us the circumstances surrounding
25	that?	

occasion I went with Mr. Oat to see the moneys and I so did, I saw them in bundles of \$5000 totaling approximately There did come a time when the money was actually With regard to a payment by two \$1800 payments totaling \$3600 for out of area rent, do you recall receiving Do you know the circumstances surrounding your Yes, we all had expenses at our personal residences for business use, whether it be an office or work at home or entertaining prospective sales personell which I certainly interviewed at home, because we did have a number of men from the State of New Jersey, and I reside in New I also met with potential underwriting candidates, officers of companies and attorneys who brought them to my home. So this money was used to defray part of that

1	qb-53 Hayton-direct	
2	expense that I incurred.	
3	Q How many salesmen did your firm have?	
4	A To my knowledge over 120.	
5	G Of those salesmen how many were part time	
6	salesmen?	
7	A At least three-quarters of them.	
8	Q cid they have any expenses that required re-	
9	imbursement in cash?	
10	A The part time officers?	
11	Q Yes.	
12	A Yes, most of them did.	
13	Q What were those expenses?	
14	A Well, these men and by the way, I brought	
15	most of them into the firm and I knew them quite intimate	Ly
16	I went out with many of them to make sales. They utilize	ed
17	their own automobiles and incurred expenses for traveling	
18	such as gas, tolls and automobile expenses for gasoline a	nd
19	minor entertaining, and every once in a while they would	
20	-submit a bill and it would be reimbursed to them.	
21	Q Did they ever have any home expenses that the	y
22	would be reimbursed for?	
23	A To a minor degree telephone, yes.	
24	Q If they worked in your office who would pay t	he

telephone?

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1	qb-56 Hayton-direct . 225
2	BY MR. GALLOP:
3	Q I show you a confession of judgment, dated
4	November 29, 1968, and ask you if you can identify your
5	signature on that confession.
6	A Yes.
7	Q Was this confession executed by you and your
8	two partners pursuant to this \$100,000 lcan?
9	MR. GALLOP: Yes?
10	MR. WILE: What is the date of it?
11	MR. GALLOP: November 29, 1968.
12	MR. WILE: No objection.
13	(Defendant's Exhibit G was received in
14	evidence.)
15	. O Did you understand by this confession that you
16	and your two partners would be personally liable if that
17	loan wasn't paid?
18	A Yes.
19	MR. GALLOP: No further questions.
20	- CROSS-EXAMINATION
21	BY MR. WILE:
22	O When was the meeting at which O'Brien demanded
23	that he get Ost out of the back office and demanded cash
24	payments for the back office employees?
25	A I think somewhere in mid-'68, perhaps July

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1	ab 57	326
	qb-57	Hayton-cross
2	0	Who accompanied O'Brien to this meeting?
3	A	Several of the other office employees.
4	0	Names, please. Who was Mr. O'Brien's assistant?
5	A	I am not sure because I rarely had much to do
6	with the ba	ck office personnel.
7	0	This is an important meeting, wasn't it? You
8	testified a	bout it, didn't you?
9	A	Extremely important.
10	Ω	Who was there?
11	A	Mr. O'Brien conducted the meeting, did all the
12	speaking an	d to me the rest were faces. I really can't
13	say the name	es. I don't remember the names.
14	0	Do you know a fellow named Freilich?
15	. , а	Arnold, yes.
16	Ω	Was he there?
17	A	I can't say if he was or not.
18	Ω	Was he O'Brien's assistant?
19	А	At some point in time he was. Whether it was
20	at that time	or not, I really don't know.
21	Ω	Who became your office manager when O'Brien left?
T	А	We had a Testa Steve Testa.
-	n	Are you sure it wasn't Freilich?
24	А	Not to my knowledge.
25	0	Who were the key employees who were going to

1	1 qb-58 IIa	yton-cross	227
2	receive these under-the-	table payments?	
3	3 A People who w	orked with O'Brie	n in the back office
4	4 0 Who?		
5	5 A I can't help	you there, sir,	because I don't
6	6 know names.		
7	7 O You testifie	ed that the Selma	Peffer Holtz account
8	8 was a firm account, is t	that correct?	
9	9 A Yes, sir.		
10	Q Is there a t	rading ledger for	it?
11	A Is there a t	rading	
12	2 O Was there a	trading ledger fo	r the Selma Feffer
13	3 Holtz account?		
14	A I would say	yes. I don't r	ecall seeing it,
15	but I would say yes. I	not being a trad	er was not involved
16	6 with it.		
17	Ω Were the pro	ofits of the Selma	Feffer Holtz
18	transactions reflected o	on the books of th	e company?
19	9 A Yes.		
20	Ω Let ie hand	you Exhibit 24.	Find them.
21	A This appears	to be a general	journal, a general
22	ledger with assets, liab	oilities and capit	al accounts.
23	It might not have been i	in this particular	ledger. This is
24			
25	O See if you o	can find the profi	ts in any trading

1	gb-59 Hayton-cross 228	
2	accounts in that general ledger.	
3	A We have various trading a counts summarized in	
4	this ledger.	
5	O That is what we are getting at, the profits	
6	from the trading accounts are then transferred to the	
7	general ledger, aren't they?	
8	A Yes.	
9	Q Find the profits from the Selma Feffer Holtz	
10	account in there.	
11	A All these trading accounts are designated by	
12	letter, not by name.	
13	O There is no Selma Peffer Holtz, is there?	
14	A Not in this ledger. They are all by letter.	
15	. Q Now far do they go? No Selma Feffer Holtz,	
16	just letters.	
17	A Yes.	1
18	0 Mr. Hayton, aren't you the guy who signed that	
19	corporation's 1968 tax return?	
20	- A Yes.	
21	O Is it your testimony today that the profits from	4
22	the Selma Feffer Holtz account were reported to the	1
23	Government in 1968?	
24	A As far as I know. I don't know otherwise.	-
25	Q How long after an underwriting does the company	

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ab-64 Hayton-redirect

necessarily incurred in December?

- No, not necessarily so.
- They were reimbursements for expenses incurred prior to December?

It could have been an entire accumulation of many months of expenses on the part of various salesmen who we settled up with at the particular time of the year at a particular month, yes.

MR. GALLOP: Nothing further.

THE COURT: How long was the \$50,000 in cash in the vault as far as you know?

THE WITNESS: I think it was there about two years.

THE COURT: What kind of business judgment is that of putting cash in a vault and not getting interest for it?

THE WITNESS: When we borrow money from the Cohans, we kept it there to assure them that we had backup funds to repay part of that loan.

THE COURT: Why couldn't you reassure them if you had it in the bank and give them the book as a collateral? THE WITNESS: It had already been put in the vault in cash.

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THE COURT: I don't know what sense -- was the reason that you were putting it in the vault in cash so there would be under the table payments to these people? What was the reason of keeping cash in a vault?

THE WITNESS: I really don't know the reason for that beyond the fact that it was there and we didn't choose to move it.

THE COURT: It certainly is not good business judgment, is it, to keep cash in a vault for two years, \$50,000?

THE WITNESS: It doesn't seem like good business judgment, but I think we may have had a valid reason.

THE COURT: I would like to hear what it is.

THE WITNESS: I know Mr. Ost, with his close relationship with the Cohans, since we had already accumulated the funds, he indicated to Jerome Cohan that the money was there in cash to repay at least 50 per cent of that \$100,000 loan, and I think the conversation between them went that that is where it is going to stay until that loan is repaid.

THE COURT: Don't you know that Cohan refused to take cash and refused cash money and wanted a check or some other document, that he would not take the cash?

THE WITNESS: I knew that eventually, but at

Hayton-redirect qb-66 recross the time we didn't. But at the time of making payment 2 he didn't want cash. And I know Ost at that time obtained 3 a check for him. But during the time it was there we 5 didn't know that. 6 THE COURT: All right. 7 Anything else? 8 BY MR. GALLOP: 9 Did the corporation have the money to pay the second \$50,000 in the bank account? 10 At which time, sir? 11 12 In 1970. 13 No, we did not. Do you know where it got the money to pay it? 14 Q We got a Federal tax refund from losses incurred against taxes that were paid in prior years and that money was used to pay the second \$50,000 to Cohan. So if this cash had not been used to pay the first 50,000, there were no other corporate funds available 19 20 were there? 21 No, sir. 22 RECROSS-EXAMINATION 23 BY MR. WILE: When did Weinberg, Ost & Hayton cease doing 24

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business?

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157a Hayton-recross

- A I think it was 1970 we stopped doing business under that name. I would say May '70.
- O And you began doing business as the Hayton Corporation?
 - A Right.
- Q Was the Sadie B. Cohan loan carried in the books of the Hayton Corporation?
 - A I think so, yes. Yes, it was.
- Q Wasn't it carried on those books in the amount of \$100,000?
 - A I believe so.
 - Q But you paid back 50,000, isn't that correct?
- A Not up to that point. I think subsequent to that we paid the 50 and then the second 50 was paid in early '71.
 - MR. WILE: Your Honor, I think --
- THE COURT: The check is dated October and actually delivered, if my recollection serves me right,

 December 8, '70.
 - THE WITNESS: We were already then the Hayton Corporation.
 - Q But when was the first 50,000 paid?
 - A That was the first 50,000. That was the accumulation of \$50,000 in cash which had been paid in one check

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to the Cohans and then in early '71 was the second payment,
I think whenwe got the refund.

MR. WILE: I have no further questions.

MR. GALLOP: No further questions.

THE COURT: Thank you.

(Witness excused.)

MR. GALLOP: Mr. Ost.

HARVEY OST, the defendant, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GALLOP:

O Mr. Ost, when the bank check #1697641 was turned over, did you receive a receipt signed by Mr. Cohan's attorney?

- A Yes, I did.
- 0 Was this the receipt that you received?
- A Yes, it is.

MR. CALLO: I offer it in evidence.

(Defendant's Exhibit H was received in evidence.)

- O That receipt is dated December 8, 1970?
- A Yes, it is.
- That is for the one check totalling \$50,000,

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is that correct?

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A Yes.

Q Subsequently an additional check of \$50,000 was turned over to Mr. Cohan, is that correct?

A Yes.

O Where did the funds for that check come from?

A We had received a tax refund from the Federal Government and I believe also from the New York State Government and these funds after being deposited to the corporate account were issued to the estate of Sadie B. Cohan for the payment of the second installment.

O Did the firm have any other moneys with which to pay that loan?

A No, it did not.

O Do you have the documents you received from the Internal Revenue Service indicating the refund?

A Yes, I do.

O May I have them?

A Yes, it is in my briefcase.

MR. GALLOP: I would like marked for identification three notices of adjustment received from North
Atlantic Service Center, Internal Revenue Service, Andover,
Massachusetts.

(Defendant's Exhibits I, J and K were

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marked for identification.)

Was it from the funds that you received as a result of these adjustments that you paid the second \$50,000?

A Yes, sir.

MR. GALLO: I offer these three notices.

MR. WILE: No objection.

(Defendant Exhibits I, J and K were received in evidence.)

Q You were aware that you had signed a confession of judgment, is that correct?

A Yes, I did.

Q Did you understand that you and your two partners were personally liable for the \$100,000?

A Yes.

O Have you ever been in any trouble with the law prior to these particular offenses?

A No, sir.

Ω How long have you been associated with the firm of Weinberg, Ost & Hayton?

A From its inception to its final end.

Q Were you an officer, were you the 1st on the letterhead?

A Yes, sir.

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Were you an officer and director in 1968? Q

Yes, I was.

What was your function during the year 1968? What duties did you have with the firm?

> Primarily supervising the back office. A

Did you supervise the back office throughout the 0 year 1968?

> No, sir. A

When did you cease to supervise the back office?

If it is a date that you are looking for --

Approximately when.

It was approximately in the latter part of the summer or the beginning of the fall of 1968.

Did you maintain any accounts at the firm of Weinberg, Ost & Haytnn, personal accounts?

Yes, I did have an account.

Under what name was that?

The account was under my personal name, Harvey A

Did your wife maintain an account? Q

Yes, she did.

You have heard testimony indicating that you received a bond from General Electronics Corporation, is that correct?

in December 1970.

I was too busy, it was too hectic to be concerned about an incidental item and I said, "Whatever you do, Al, all right, just let me know." I completely forgot about the item. It passed me by. The firm went out of business

As things began to clean up, and I was the person who helped primarily to clean up this entire mess, something came across that reminded me of this bond and I

could not find it. I assumed then that it might still be outstanding because a check came in the mail for interest,

and I wrote to the company thinking it might have been

lost through the mails when it was sent to us originally, and

I indicated that it might have been lost, would they

please indicate and replace.

They did and they indicated that they are replacing the bond by the notice attached, and a bond was sent.

The indication was Weinberg, Ost & Hayton.

Since I was the officer of that corporation, I asked them

to put it into my name as custodian for the corporation.

When time went on I considered the bond was a return of capital to me, and it was non-taxable under those conditions.

Q When did you receive this bond which is made

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out fo Harvey J. Ost? Is there any indication?

A There is a close indication -- well, the notice was dated January 7, 1971. Shortly thereafter through the mails it had to be sent to me. The bond was dated November 1, 1970.

Q Who did you receive the bond from?

A I regived it from the trustee, in this case
it would have been the Mellon National Bank & Trust Company.

MR. GALLOP: I offer the bond and the little memorandum attached to it from Mellon National Bank in evidence.

Q With regard to this bond do you have anything further to say about it?

A When I did receive the bond I immediately made it negotiable by endorsing it on the back so if anything happened to me that bond would be available to those who might show claim on it.

O Do you know for a fact that this is the bond which is indicated in those records?

A No, I don't know that for a fact. I can only assume.

O Do you have knowledge of any other bond from General Electronics that you bought during this period of time?

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1	qb-76 Ost-direct				
2	was said at the meeting.				
3	MR. WILE: Even the fact of the meeting is				
4	hearsay.				
5	THE COURT: That is true.				
6	Ω Were you able to observe a meeting in Mr.				
7	Hayton's office?				
8	Λ Yes, it was easily observed because our walls				
9	were clear glass.				
10	Q As best you can recall who was present at that				
11	meeting?				
12	A Jim O'Brien. I do remember seeing through that				
13	glass Arnold Freilich, and I can probably guess at the few				
14	others, who were cohorts and directly under the supervision				
15	of Jim O'Brien.				
16	Q Were you present at that meeting?				
17	A No, sir.				
18	Q At any time?				
19	A No, sir, I was not present at any time.				
20	Q Was it made known to you that you were not to				
21	be present at that meeting?				
22	A Yes, sir.				
23	Q After that meeting did you have a discussion with				
24	your two partners?				
25	A Yes, I did. They called for the meeting with				

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Ost-direct qb-77

me.

At the subsequent meeting then tell us what transpired with regard to the Selma Feffer Holtz account.

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My partners indicated what transacted at this meeting, that Mr. O'Brien had asked that I be removed from the back office supervisory capacity.

MR. WILE: I object. Hearsay.

THE COURT: Yes.

MR. GALLOP: We are not offering it for the proof of what happened --

MR. WILE: Then it is irrelevant if that is the only possible purpose it is being offered for.

THE COURT: I will sustain the objection. You can take what happened afterwards, but it is hearsay.

Did you agree to open a trading account as a result of that meeting?

Yes, we had agreed to open a second trading account.

How was that account to be designated?

It was agreed that we would designate it in the company's name of Selma Feffer Holtz.

For what purpose was the account to be opened?

The account was to be opened to raise sufficient cash by way of profits in that account in which to bend

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168a Ost-direct gb-78 1 to the wishes of Mr. O'Brien and his other people present. 2 What was that money going to be used for? 3 To give them the cash bonuses they requested. Were there any other instructions given to you 5 at the meeting you had with your partners concerning your 6 activities in the firm? 7 Yes, they asked me if I would please stay out 8 of the back office. 9 I was quite irate and I was very angry and at 10 that point I wanted to fire everyone I could see. They 11 calmed me down and finally got me to agree that I would 12 look into other areas of the corporation that needed work, 13 such as the area of customers' complaints which was 14 voluminous, and so I followed through. 15 From the time of that meeting until the end of 16 the year what was your primary duty at the firm? 17 Please repeat that. 18 From the time of that meeting until the end of 19 the year --20 I have the question. I did take care of 21 customers' complaints in every facet -- those complaints 22 coming directly from customers, those complaints that came 23

> from the SEC and those through NASD. Were there a lot of customer complaints during

	109a C. 248					
1	qb-79 Ost-direct					
2	that period?					
3	A Dear Lord, hundreds. I would complete ten in					
4	a day and the next day there would be twenty.					
5	Q Were any of these complaints as a result of the					
6	poor record keeping of the firm?					
7	A They were only the result of the poor record					
8	keeping.					
9	O How would you characterize the record keeping					
10	at that period of time?					
11	A Disastrous was an understatement. It was ab-					
12	solutely impossible.					
13	O Did you have a checkwriting machine at this time?					
14	A Yes, I did.					
15	. Q Who was available to use the checkwriting machine?					
16	A Three people, with the exception of my partners,					
17	which would make five. Myself, Jim O'Brien and another party					
18	who was one of the head bookkeepers.					
19	Ω Do you recall that party's name?					
20	A Yes, I do.					
21	Q Who was that?					
22	A Mrs. Kay Thacher.					
23	Q Did you know every time the checkwriting machine					
24	was used by other parties?					
25	A Well, the machine was directly in back of me					

	170a i. 249
1	qb-80 Ost-direct
2	sitting on a window ledge. You couldn't help hear the
3	macchine operate when it was in operation.
4	. Q Would you know what checks they were signing
5	with your facsimile?
6	A Not always. The checks would be coming in for
7	payments through brokers for deliveries, payments to
8	customers with credit balances, payment for expenses through
9	out the period.
10	O Approximately how many checks a week ran
11	through the firm?
12	A I can tell you on a daily basis it was at least
13	200. If you want to multiply that five times, it would
14	be 700 to 1000 a week.
15	. Q How many people did you have working in your
16	back office at that time?
17	A I have heard testimony that there was 40, 50,
18	76. In total there was about 90-odd people in help.
19	Q How many of those 90 were clerical help?
20	A Actually they all were clerical help with the
21	exception of Jim O'Brien being a supervisor.
22	Q With regard to salesmen, how many salesmen did
23	you have?
24	A We had a complete total of maybe 130 to 150
25	galesman.

salesmen.

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How many were full time and how many part time?

As I remember between traders and full time A salesmen there might have been 20, 25 of them. The remaining difference was part timers.

Where did the part timers work?

Well, most of the time they did not work from our office. Though on rare occasions they did show up, occasionally they used our facilities. But 90 per cent of the time or more away from our office.

0 When they used your facilities, did you pay the expenses attendant to the use of those facilities?

Completely, yes, we did.

With regard to this money, can you explain -withdrawn.

Did the Selma Feffer Holtz account only have profitable trades?

Yes, sir.

Can you explain how that was accomplished?

Yes, Mr. Weinberg would be trading all day and would accumulate a number of trades that normally would go into our normal trading account which was designated code letter "A."

At the end of the day we would choose from these trades only those that were most profitable to be

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placed into the second trading account designated code named Selma Feffer Holtz.

Q What happened with the funds or the moneys that were generated, the profits generated after they were credited to the Selma Feffer Holtz account?

A Checks were cashed or checks were written out under the name of Selma Feffer Holtz and then cashed at the bank. The moneys then would be placed into a corporate vault and it was placed by wrapping them in rubber bands.

When I attained \$5000 I would then wrap that \$5000 pack in a paper band that I obtained from the bank.

Ω Approximately how much money was accumulated as a result of the use of this account?

A Somewhat over 50,000, maybe between 50, 52, 53,000.

O Did you use this money to pay bonuses to any of your back office personnel?

A No, sir, we did not.

O Did anything transpire for you to change your mind?

A Yes, rumors went around that Mr. O'Brien and Mr. Schwinger were going to form a brokerage firm by the name of Austin James & Company, and that Mr. O'Brien was going to leave our employ and will take some of our key

	173a				
1	qb-83 Ost-direct 252				
2	personnel with him.				
-3	At that point it made no sense to give them				
4	cash bonuses as we had agreed to				
5	O At the end of the year were bonuses a custom				
6	in the Wall Street community?				
7	A Yes, sir. During the year and at the end of				
8	the year.				
9	Q Was the year '68 known as a year where large				
10	bonuses were paid?				
11	A It was the banner year in the stock market.				
12	Very large bonuses were paid.				
13	Q Did you pay bonuses to your employees?				
14	A Yes, sir, we did, but not cash bonuses.				
15	. Q Did you use the Feffer Holtz money, the account,				
16	for these bonuses?				
17	A No, sir, I did not.				
18	Q Did you subsequently use this money for any par-				
19	ticular purpose?				
20	A Yes, it was.				
21	Q What purpose was that?				
22	A The money was used in order to pay the first				
23	installment of the Jerry Cohan los item of \$100,000.				
24	Q You are talking about the Jerry Cohan loan. That				
25	is the \$100,000 loan from the estate of Sadie Cohan?				

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- A Yes.
- Q How do you know Jerry Cohan?

A We moved into the neighborhood when the houses were quite new and our houses nearly abut one another. We see each other daily. We became very friendly and became even more friendly as time drew on.

- 0 Were you friendly prior to this loan?
- A Yes.
- Q How long does your friendship go back?
- A It goes back to the time I moved in there and that would be about 1963.
 - O Are your families socially friendly?
 - A Yes, they certainly are.
- Mr. Cohan concerning this loan?
 - A The summer of 1968.
- O Do you recall the circumstances surrounding those discussions?

A Yes. During that time my father had passed away a few months prior and Mr. Cohan's father and mother passed away also in that period of time. Our religion forced us -- we went to synagogue to say memorial prayers and we had to go to synagogue during a period of ten or eleven months of that year. We went there in the mornings

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and in the evening. There was lots of time to talk to him.

- During that time did you discuss the possibility of a loan for your corporation?
 - Yes, sir, I certainly did.
- Do you recall what you said with regard to the amounts of the loan, how much it would be?

Well, Mr. Cohan first indicated that he had a substantial amount of money that was left by his mother's estate, Sadie B. Cohan, and he would like to make an investment with some of these moneys. He indicated that he would like to invest 100,000. I made an offer to invest it in our corporation. We discussed it under those terms.

Do you recall the interest rate that you discussed?

Yes, I offered him, with the approval of my partners, 8 per cent interest which at that time if I might add was nearly twice as much as the banks were paying. That was the indicement to complete the loan.

When was the loan actually consummated, if you recall?

Yes, it was consummated and signed on December 3, 1968, and at that time I did receive a check for \$100,000 from the estate of Sadie B. Cohan.

		176a Ost-direct 255
1 2	qb-86	When you say you received it, to whom was the
3.	check made	payable?
4	A	It was payable to the corporatgon, Weinberg,
5	Ost & Hayt	About the time that the loan was consummated,
6	Q	we any discussions with Mr. Cohan concerning any
7	did you ha	ve any discussions we the loan?
8	steps you	had taken to insure payment of the loan?
-		Ves. Mr. Cohan was always concerned, more par
10	1	his attorney was concerned about the security
11	of the lo	an and how good we were and so forth. I told him
12		ally convinced him that he is not to worry.
13	of that 1	loan was secured in the way of cash that I had in
14	4 the corpo	orate vault.
15	.5	THE COURT: What period of time are you talking
1	about?	
1	17 0	What period?
	18 A	That was about the fall, I would say, of 1968.
	19 Q	Mr. Ost, that loan was renewed, is that correct
	20 A	Yes, it was.
	21 0	When was the first payment eventually made?
	22 A	Are you referring to the first installment and

That was paid in December 1970, as I recall.

payment?

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Right.

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1	qb-87 Ost-direct 256
2	Q The loan originally though was due when, do you
3	recall?
4	A No, I don't really rightfully recall, but maybe
5	some papers might reflect it.
6	O I show you Defendant Exhibit Dl in evidence,
7	and ask you if that refreshes your recollection as to how
8	long the original loan was for?
9	A The original loan was for 13 months and sub-
10	sequently the loan was renewed, I imagine for a following
11	13 months, which was required by SEC regulation.
-	O So at the outset of the loan you only anticipate
13	it would be a one-year loan?
14	A Somewhat more than one year.
15	. Q And in order to renew it and increase it for
16	additional years, did you have to change the terms at all?
17	A Yes.
1.8	O How did you change the terms?
19	A We had to induce it by offering him a greater
20	amount of interest.
21	Q What was the interest changed from?
22	A From 9 per cent to 10-1/2 per cent.
23	Ω Did there come a time when you actually made
24	the first payment to Mr. Cohan or to the estate of Mr.
25	Cohan's mother for the purpose of reducing the loan?

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- A Yes, there came a time when this was done.
- O Did you have any conversation with Mr. Cohan at that time?
 - A Yes, I did.
- O Did you offer to pay him the cash that you had put aside?
- A I made the offer of cash both to Jerry Cohan and to his attorney. They both immediately responded with a refusal. I then began to remove the moneys --
- When they refused to take cash did you then advise them as to what you were going to do?
 - A Yes.
- O Did you advise them you were going to pay them by check?
 - A I told them I would get a check to them.
 - Q Did you then tender to them a check?
 - A I did.
 - Q Was it a single check or a series of checks?
 - A The final conclusion was a final check.
- O Prior to the final check was it a single check or a series of checks?
 - A I believe there was a series of 51 checks.

 (Defendant's Exhibit M was marked for identification.)

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2 so many checks, I should please get him one single check 3 for the 50,000.

> I believe it is the Greenwich Savings Bank check --

Yes, I purchased that Greenwich Savings Bank check with the 51 checks.

You purchased Exhibit E which is check 1697641 with the series of checks represented by Exhibit M, is that correct?

- A That is correct, sir.
- Was this check delivered to Mr. Cohan's attorney?
- Yes, it was.
- And you received a receipt from him for that?
- A Yes, I did.
- 0 YOu have seen the corporate tax return for the year 1968.
 - I am sure I had, but I hardly remember. A
 - Is the loan indicated on the tax return? 0
 - A Yes, it certainly is.
- To the best of your knowledge is it indicated in all the books and records of the corporation?
 - It certainly is.
- O Did the corporation have other obligations at this time?

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A Hundreds, both to customers as well as other professional people.

O Did this particular obligation to the estate of Sadie Cohan have any special significance to you?

A Yes, much significance. Number 1, I was personally liable. Number 2, this man is the closest friend and my neighbor.

Number 3, I had made a promise that I would keep and protect him.

At the time you had indicated to him, which I believe was the latter part -- let me ask you again -- when did you indicate for the first time to Mr. Cohan that you had put aside cash?

A It was in the fall of 1968. I believe I testified as to that before.

- O Could you be more specific?
- A Around November.
- Q At that time did you have any fears as to the financial health of your corporation?
 - A Yes, I did.
 - O Can you tell us what they were based upon?
- A Yes, missing stocks, substantial amounts of missing securities, lack of funds, bad records.
 - O Did the condition of the records indicate to you

Ost-direct

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that you really couldn't tell the financial health of your company at that time?

Well, that is true. The record itself couldn't tell you the financial condition, but you didn't have to be a Solomon to see yourself going down the drain.

- Were you the only company on Wall Street at 0 this time with this sickness?
 - No, I was only one of few, many in fact.
 - Did many of the firms in your area close down? 0 MR. WILE: Objection, irrelevant.

MR. GALLOP: I withdraw the question.

What happened in 1969 with regard to the financial health of your company?

MR. WILE: Objection, irrelevant.

Sustained. THE COURT:

- WAs the profit in 1969 greater than the profit 0 in 1968?
 - No, it was substantially less. A
 - Did the company make a profit in 1970? 0
 - No. A
 - When did the company go out of business? 0
 - Probably October 20, 1970.
- Do you know of any other funds that might have been available to pay this obligation aside from the funds

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

Ost-direct

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which were used to pay?

- There weren't any other than those funds.
- With regard to the use of your home for business purposes, there is testimony, I am sure you heard, that you received two checks for \$1800. Can you tell us what that was for?
- A They were reimbursements for expenses that I have incurred by using my one single room of my home strictly for my office.
 - What expenses did you incur?
- Mailing, postage, telephone, there was entertainment and the like.
- When you say entertainment, are you referring to entertainment out of the home or in the home?
 - I am referring to in the home. A
 - During '68 did you work often at home?
 - Every day when at home. A
 - Did you work in a particular room in your house? 0
 - Yes. A
 - WAs that room set aside as an office? 0
 - Yes, sir. A
- Was it actually built and furnished as an office?
 - A Yes, it was.

1	qb-100 Ore direct 269
2	replacement.
3	O Did you knowingly or wilfully omit a bond with
4	a value of approximately \$1000 from your tax return?
5	A No, I would never do that. No.
6	With regard to the Selma Feffer Holtz account,
7	was that ever your own personal funds during this period
8	from '68
9	MR. WILE: Objection. Asked and answered.
10	THE COURT: He already said it was the firm
11	trading account.
12	O Did you knowingly or wilfully omit to put on
13	your income tax returns any of the funds coming out of this
14	account?
15	A Repeat that.
16	Q Did you knowingly or wilfully in an attempt
17	to defraud the Government attempt to put the funds
18	A No.
19	O Did you ever consider these funds to be your
20	own personal funds?
21	A No, I never did consider them.
22	MR. GALLOP: No further questions.
23	CROSS-EXAMINATION
24	BY MR. WILE:
25	o Mr. Ost, let me show you your 1968 tax return,

2	A Yes, I did. 271 O Did you put a Schedule D on there? A I think I did. Yes, I did. O That is income, isn't it, on Schedule D, gains
3	A I think I did. Yes, I did.
	A I think I did. Yes, I did.
4	Q That is income, isn't it on Schodule a
5	, on schedule b, gains
6	from sale or exchange of capital assets?
7	A Yes.
8	O So that is income and you knew it. Now I ask
9 -	you, did your mother have income of \$600 or more in 1968?
10	A If you designate that to be income, yes.
11	O In fact, Mr. Ost, you prepared her tax return,
12	didn't you?
13	λ Yes, I did.
14	Ω That is Gov comment Exhibit 36. How much incom
15	did your mother report in 1968?
16	A Based on your definition of income, gross
17	\$12,598.43.
18	O My definition of income. Is there somebody
19	else's definition you like better?
20	A Yes, mine.
21	Ω Does yours find any support in say the Internal
22	Revenue Code?
23	A Say that again.
24	O Does your definition find any support for itself
25	in the Internal Revenue Code?
	A I don't know because I am not familiar with the

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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One dollar to Merrick Fire Department Fund.

In 1969 did you deduct on your tax

Since the inception of Weinberg, Ost & Company,

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qb-105

Ost-cross

a partnership, which was I think 1960.

Q Is an entry in the trading account of a brokerage firm wherein securities are represented as delivered
out or sold but there is no monetary credit, is that a
proper entry?

A It is reflecting a position and under those conditions you don't need a monetary figure.

Q What do you mean by reflecting a position?

A There are two major factors in the brokerage firm, the value of money and the value of stock. Stock has a total and stock has a value. You have to keep two controls, one for stock, one for money.

O I am asking you about an entry signifying a delivery of securities against no monetary credit. Is that a proper entry?

A If the stock had no value, yes. As for example

O What if it has monetary value, is it a proper entry?

A It all depends on other circumstances that you have not brought out yet.

Q Let's look at this General Electronics entry.

Do you maintain that that is a proper entry in those books?

A At the time, yes.

O Is it improper today and proper then?

		189a
1	qb-106	Ost-cross 275
2	A	It is improper today because there is no firm
3	and there is	no business.
4	0	Tell me, if the six bonds were delivered out
5	of the firm	for no money, is this the way it would be repre
6	sented in th	e books?
7	A	Yes, it should be.
8	Ω	Does this entry represent a loss of \$5842.74?
9	A	No, I think it represents a loss of 3594. Am
10	I correct?	
11	0	No.
12	λ	I stand corrected then.
13		Tell me why not.
14	Q	I don't have to answer questions, you are
15	answering.	
16		Can you add up the cost basis of those six
17	bonds in th	is column?
18	A	Yes, 5842.74.
19	O	Isn't that the amount written off? That is as
20	loss to the	profit and loss statement?
21	Λ	What about these two thousand?
22	O.	What is the date of those two thousand?
23	A	October 29.
24	n	What is the date of the delivery of the 6000
25	shares?	

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1	qb-108 Ost-cross 277
2	Beverage. Did you give instructions for the delivery
3	of 900 shares against no money on December 17, 1968?
4	A Absolutely not.
5	O A complete fabrication, whoever wrote that in
6	there?
7	A I don't know. I don't even remember that item.
8	Were they warrants or stocks? I didn't notice that.
9	Q Who proposed using your wife's maiden name for
10	the Selma Feffer Holtz account?
11	A As I recall, I did.
12	O Did you ever write anything on the order tickets
13	for the transactions in the Selma Feffer Holtz account?
14	A I might have. I just don't recall if I did
15	or did not.
16	Q What might you have written on them?
17	A I might have written the Selma Feffer Holtz
18	trading account.
19	O On the order tickets?
20	A At the end of the day. It is possible.
21	O You might have inserted the name Selma Feffer
22	Holtz?
23	A I might have.
24	O This is after you matched up the trade to insur
25	a profit for that account?

.		192a
1	qb-109	Ost-cross
2	λ :	It is possible.
3	Q	A riskless trade?
4	Α :	It is possible.
5	Ω 1	Did you tear the pages out of Government
6	Exhibits 1 th	hrough 9?
7	A	I did not.
8	Ω :	Did you cut the bindings on those books?
9	A	I did not.
10	0	Did you get rid of the canceled checks of the
11	company?	
12	A	I did not. You have them.
13	0	Well, Mr. Ost, was a subpoena served on you
14	in this case	by Agent King?
15	. У	I think there was.
16	0	Do you remember telling Agent King that there
17	were no canc	eled checks any longer?
18	A	No, I never said that. I said they were not o
19	my premises.	
20	0	Where did you say they were?
21	A	They were at the storage house that he raided
22	and took out	all the stocks, books and records.
23	Ω	If the Government doesn't have any canceled
24	checks of yo	our company today is it because Agent King
25	destroyed th	em?
	il .	

- 1	193•	
1	qb-110 Ost-cross 279	
2	MR. GALLOP: Objection.	
3	Λ I didn't say that.	
4	THE COURT: Since he already answered I w	i11
5	sustain it.	
6	Ω Do you know who did remove the pages from	Govern
7	ment Exhibits 1 through 9?	
8	A I don't know exactly who, but I have an i	dea.
9	Q Do you know who cut the bindings?	
10	The one who removed the pages.	-,-1-1-
11	MR. WILE: I have no more questions.	
12	REDIRECT EXAMINATION	
13	BY MR. GALLOP:	
14	Q If you were shown a series of transaction	s
15	where there was stock delivered out at no price and i	f some-
16	body wanted to steal stock from your firm, would they	alter
17	the books in that manner?	
18	A That is one method.	
19	MR. WILE: I object, that calls for	
20	speculation.	
21	THE COURT: Sustained.	
22	0 With regard to the removal of the pages,	do you
23	have any idea as to who may have removed the pages?	
24	MR. WILE: Objection, it calls for specul	ation.
25	MR. GALLOP: I believe that it was opene	d up.

	1948
1	qb-111 Ost-redirect
2	THE COURT: I will allow no guesswork.
3	MR. WILE: I asked him if he did it and he says
4	he has an idea.
5	O When you said you had an idea who did it, did
6	you mean it was somebody other than yourself?
7	λ Yes.
8	Q Did you mean to imply that you authorized in
9	any manner the removal of any of the records?
10	A No, absolutely not.
11	Q With regard to the records which were in
12	storage, did you destroy any of those records?
13	A No, I did not.
14	Q Did you advise Agent King that any records he
15	might want would be in storage?
16	λ Yes.
17	O Did you have any further dominion and control
18	over the records?
19	A No.
20	Q Did you prevent Agent King from going to the
21	storage facility?
22	A I did not.
23	MR. GALLOP: No further questions.
24	(Witness excused.)

	195a
1	qb-112 Freilich-direct
2	MR. GALLOP: The defendant rests.
3	MR. WILE: The Government has rebuttal, your
4	Honor.
5	THE COURT: How long will it take?
6	MR. WILE: Five minutes, your Honor.
7	THE COURT: All right.
8	MR. WILE: The Government calls Arnold
9	Freilich.
10	ARNOLD FREILICH, called as a witness
11	in rebuttal by the Government, having been first duly
12	sworn, was examined and testified as follows:
13	DIRECT EXAMINATION
14	BY MR. WILE:
15	Q What is your business or profession?
16	A Accounting.
17	O By whom are you employed?
18	A Right now I am doing per diem work for myself.
19	Q Where were you employed in o968?
20	A Weinberg, Ost & Hayton.
21	Q What was your position at that time?
22	A For part of the year I was assistant cashier.
23	I believe toward the end of the year I became cashier.
24	O Is your father-in-law named Philip Morgenstern?
25	A Yes.

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	0	Was an	indictment	against Philip	Morgenstern,
75	Civil	338, filed	in this co	ourt on April 1	15, 1975?
	A	Yes.			

O Did he plead guilty to that indictment September 3, 1975?

A Yes.

qb-113

O Did that count charge Mr. Morgenstern with evading income taxes on approximately \$35,000 in 1968?

A Yes.

0 When is Mr. Morgenstern to be sentenced?

A October 14.

Q Did Mr. Morgenstern reach an agreement with the Government prior to his guilty plea?

A Yes.

0 What are the terms?

A The terms were that he would cooperate in every way he could.

Q As part of that cooperation you came forward and told the Government about the facts to which you are about to testify?

A Yes.

Or at least that was the hope expressed by you and by Mr. Morgenstern, is that correct?

A Yes, it is.

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gb-114

Freilich-direct

O Did you personally evade income taxes on unreported capital gains in 1968?

A Yes, I did.

O Do you know the approximate amount of those capital gains?

A I believe they were in the area of \$25,000.

Were you ever prosecuted for that income tax
evasion?

A No, I wasn't.

O Did you cooperate with the Government from the inception of this investigation?

A Yes.

Not be prosecuted?

A No.

O when did you learn that you would not be indicted?

A After April 15, 1975.

MR. WILE: That is the day the statute ran.

O Do you know a man named Harvey Ost?

A Yes.

O Do you see him in the courtroom?

A Yes.

o Point him out, please.

MR. GALLOP: I will concele the identification.

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Freilich-direct

- Q Did you have a conversation with Harvey
 Ost on or about May 16, 1975?
 - A Yes, sir, I did.
 - O Who initiated that conversation?
 - A Mr. Ost.
 - O How?
- A I had seen Mr. Ost previously and he asked me if I had some time because he wanted to talk to me about a way in which I could probably help his case as well as my father-in-law's.
- Q Where did the conversation subsequently take place?
- A The conversation took place basically in a coffee shop on Broadway.
- Q Was anybody else present during that conversation?
 - A No.
- O In words or in substance as best you can recall what was said by you and what was said by Mr. Ost during that conversation?
- A Well, after we were just talking about our families Mr. Ost asked me if I remembered some things that had occurred in 1968. Mr. Ost told me that he had not been popular with the people in the back office of Weinberg, Ost

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told me that Jim O'Brien had gone to Ed Hayton and told
Mr. Hayton pretty much that fact and that Mr. Ost was so
outraged that he was going to fire the whole back office.
He then said that there was a meeting between Messrs. Ost,
Weinberg and Hayton at which time Mr. Hayton and Mr.
Weinberg told Mr. Ost not to go off the deep end and that
bonuses should be paid to the back office personnel.

Mr. Ost told me that he had established an account at the firm in order to make profits so that income could be generated and split apart so that Mr. Hayton could receive 25 per cent of the income in order to have him pay off or give money to people in order to get underwritings and Mr. Ost said to me, "How do you think or how else could we have gotten quality issues like Monroe Combining and E.C.Ernst. He also told me that 50 per cent of the money went to Sidney Weinberg, so that traders could be gotten some money, and so they could direct business to us and that 25 per cent of it went to Jim O'Brien who was supposed to distribute it among the back office personnel or the key back office personnel.

from Mr. O'Brien. I told him no, and he asked me if I would be willing to say that I did receive \$600, and that

Ost & Hayton?

Yes, he was.

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re ch-cross

O In what member?

A At least for part of 1968, I don't know exactly what part, he was a systems trader.

O You mentioned Mr. Mersky being a close friend.
Was he associated --

A He was a trader.

O You say by test fying you hope you are going to help your father-in-law?

A By cooperating with the Government.

You also mentioned that you had yourself evaded some taxes.

A Yes.

O Is that in any way related to Weinberg, Ost & Hayton?

A What do you mean by related?

O Its capital gains. Are these transactions with an account you had there?

A Yes, they are.

O Mr. Ost was not getting along with the back office, is that c crect?

A Yes.

Q Were you a member of that back office that he was not getting along with?

A Well, in general Mr. Ost really, I guess, tried

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qb-119

Freilich-cross

to demand perfection which I can't blame him for. When you have a lot of volume and when your people are working a lot of hours, your people do get very ". . Y. a member of the back office. I really had nothing against Mr. Ost. I realize that it was his firm.

- Were you unhappy with Mr. Ost?
- No.
- You were satisfied with the way he was rur.ning the back office?

MR. WILE: Objection. Irrelevant.

THE COURT: Yes.

- Did you ever demand that he stay out of the 0 back office, ever request that he stay out of the back office?
 - That Mr. Ost himself stay out of the back office? A
 - Yes. Q
 - I don't believe I did, no. A
 - Do you know Mr. G'Brien to do that? Q
 - I believe that Mr. O'Brien did do it.
- Let's go through this conversation again. Where 0 did you meet Mr. Ost?
 - In his office at 170 broadway.
 - And then you went to a coffee shop? 0
 - Yes.

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Freilich-cross

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What did you say to Mr. Ost in his office before you left the office? What was your conversation with Mr. Ost at the office at 170 Broadway?

At that point I came up to Mr. Ost. I told him that I had some time right then and I asked him if he was free to discuss whatever he wanted to discuss with Then we went downstairs.

Did you ask him what he wanted to discuss with you?

Not upstairs in the office, no. He said to A me, let's stop downstairs.

- He said let's wait until we get downstairs?
- Yes.
- Was his office crowded? Was he trying to avoid other people hearing the conversation?

I believe Mr. Weinberg and one other person there.

- Was there any other place that you could have talked in private with each other upstairs in the office?
 - Not that I know.
 - Where did you go downstairs?
- There is a coffee shop right downstairs in 160 Broadway, and we sat in a booth.
 - What time of day was this?

		204a	290
1	qb-121	Freilich-cross	231)
2	A Earl	ly afternoon.	
3	Q Was	it crowded in the coff	ee shop?
4	A Not	particularly.	
5	Q What	t was the first thing y	ou recall Mr. Ost
6	saying?		
7	A At w	what time?	
8	Ω At t	the time you got to the	coffee shop.
9	A Firs	st we were discussing -	- he asked me how
10	I am doing and t	then in respect to the	part of the conversa-
11	tion that relat	ted the first thing	was Mr. Ost went
12	and told me abou	ut how things were in t	the office back in 1968
13	O What	t did he say about how	things were?
14	A That	t is when he told me th	nat the back office
15	had complained a	about him to Mr. Haytor	and Mr.Weinberg,
16	or just to Mr. F	Hayton, I don't recall	which.
17	Q What	t else did he tell you	about things in 1968?
18	A Well	1, if you want me to go	through the whole
19	thing again		
20	O Yes,	, please.	
21	Λ Okay	y. Mr. Ost told me tha	at Jim O'Brien had gone
22	to Mr. Hayton ar	nd Mr. Weinberg and to	ld them that the back
23	office employees	s were very unhappy.	Mr. Ost told me

that he wanted to fire everybody in the back office when he

heard that because he felt that it was his job and he didn't

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want the back office to dictate to him. And he had a meeting with Mr. Hayton and Mr. Weinberg where it was decided that cash bonuses would be paid to employees, and that he would bend to the back office to some degree in that he would try to stay clear.

- He told you that? 0
- Yes.
- What did he tell you then?

He told me that in order to get the money for -and among other things -- these bonuses to the back office employees that an account had been opened up and that there was trading done in it to generate profits and that the account was --

Stop right there. He told you up to that point in time that there had been complaints about him in the back office.

> A Yes.

That there had been a demand for bonuses and that as a result of these demands an account had been opened up to generate money for those bonuses?

- Not only because of -hose demands. A
- Up to that point in time that is all you mentioned. 0
- Then he went into the account and he told me that an account was set up in which part of the profits

You had no idea? 0

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At that point I knew I was becoming cashier. Λ I didn't know what type of bonuses for Christmas the offices gave.

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You knew people were expecting bonuses, right? 0

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A For Christmas.

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Were you there for the entire year up to that 0 Christmas?

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A Yes.

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So you were expecting a Christmas bonus too, weren't you?

12 13

A Yes.

Did you consider yourself one of the key personnel?

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Yes.

16

So I assume you would expect a substantial 0 Christmas bonus?

17

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Yes, but this wasn't -- the way this was relayed to me it wasn't the Christmas bonus. The Christmas bonus was paid out of payroll.

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0 Did you expect any additional bonus in cash?

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As I said before, I did 't know what to expect.

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It is possible you also wanted a cash bonus, is that what you are saying?

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No. I know I wanted a honus.

į	qb-125	Freilich-cross 294
2	0	Did you hear any talk about cash bonuses?
3	λ	No.
4	Q	You never heard of that?
5	A	No.
6	Q	Never?
7	A	In the firm?
8	0	Yes.
9	A	From employees of the firm?
10		
11	0	Yes.
12	A	No.
	Ω *	Was there talk about bonuses?
13	A	Well, I was one of the supervisors in the back
14	office so p	eople would naturally come up to me and say, "Do
15	you have an	idea what kind of bonus is being given this
16	year"?	
17	Q	You say you were expecting a bonus, and the
18	word was bi	g bonuses were being paid that year. Do you
19	think your	job was such that you deserved a bonus?
20		MR. WILE: Objection.
21		THE COURT: Sustained.
22	Q	What was the condition of the back office that
23	year?	
24		THE COURT: We all know it was terrible. What
25	is the sense	e of that? There is no dispute about that.

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Freilich-cross

2 I can almost take judicial notice of it.

> Mr. Freilich, did Mr. Ost tell you that he wanted you to say that you received \$600 from O'Brien?

> > Λ Yes.

Do you know why he chose the figure \$600?

I have no idea. A

MR. WILE: Objection.

THE COURT: If he knows it of his own knowledge. He savs he doesn't know.

0 Just picked out of the air?

MR. WILE: Objection.

THE COURT: Sustained.

Did Mr. Ost tell you anything more about Mr. 0 O.'Brien?

A Just that he felt that Mr. O'Brien would be the Government's key witness in those three cases,

Did he indicate that he felt Mr. O'Brien was trying to frame him in any way?

> A No.

MR. WILE: Objection. It calls for a selfserving statement anyway.

THE COURT: Overruled. He answered it anyway. He said no.

O Did you actually leave Weinberg, Ost & Hayton?

1	qb-128	210a Freilich-cross	296
2	λ Yes.		1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1
3	O How	did you come to leave?	
4	A How d	did I come to leave? .	
5	Q Yes,	, did you find other employmen	nt? Did you
6	quit?		
7	A A co	ombinatio. of both. I was at	the point where
8	I was putting in	n more hours than I cared to.	I was working
9		ared to. I was under a lot	
10	and several indi	ividuals there were opening up	o another
11	brokerage house	and they asked me to come.	
12	Q Was	that M Brien's firm?	
13	A No.		
14	Q Ano	ther group also was leaving?	
15	. A Hen	ry Dopler and Richard Gray.	
16	Q So	you went with another group f	rom the firm?
17	A Yes	•	
18	o Did	you feel the firm was adequa	tely compensation
19	you at the time	you left?	
20		inberg, Ost & Hayton?	
21	O Yes		
22	A Yes	•	е
23	Q Do	you know why you weren't indi	cted for income

A Nc.

tax evastion?

When was it made known to you that you wouldn't

Freilich-cross

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be indicted?

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A It really wasn't made known to me at all. It is just because of my father-in-law I knew April 15th was the last day I could be indicted, and I wasn't.

O When did you say you met with Mr. Ost?

A It was in May, the middle of May, May 16, I believe.

O And at that time you knew you could no longer be indicted, is that correct?

A Yes.

MR. GALLOP: No further questions.

mentioned some names here which I am going to give you and you can talk to your client whether you want to examine them. Frank Giacetto, Allen Katz, Joe Ecklind, Melvin Notkin, Kate Thacher, and Mary Maniard. They were people in the back room. I don't know whether you want to question them, but he did mention those people by name.

...ny other questions?

MR. GALLOP: No.

THE COURT: You are excused.

(Witness excused.)

MR. WILE: No more rebuttal witness, and the

OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

43321

UNITED STATES of AMERICA

75 Cr. 391

-against-

OPINION

HARVEY J. OST,

Defendant.

OPINION

Appearances:

ey

Paul J. Curran, United States Attorney for the Southern District of New York, by Richard Wile, Asst. U.S. Atty., New York City, for the United States.

Kalman V. Gallop, Esq., New York City, for the defendant.

CANNELLA, D.J.:

The defendant, Harvey Ost, was tried before this Court without a jury on one count of violating 26 U.S.C. 2/\$ 7201, and one count of violating 26 U.S.C. \$7206(1).

After considering the evidence adduced and the post-trial memoranda of counsel, the Court finds the defendant's guilt on both counts to have been established beyond a reasonable doubt.

The Court finds that in 1968 Harvey Ost, Sidney Weinberg and Edward Hayton were the owners and chief

executive officers of Weinberg, Ost & Hayton, Inc. (WOH), a stock brokerage firm specializing in over-the-counter securities. It is undisputed that in 1968 WOH had an account under the name Selms referholtz of 42-10 Colden S reet, Flushing, N.Y. It _; also undisputed that se a Feferholtz was the maiden name of Harvey Ost's wife, and that Tessie Ost, who then lived at 42-10 Colden Street, Flushing, N.Y., is Harvey Ost's mother. Both the defendant and the Government agree that in 1968 there were 28 purchases and sales in the Feferholtz account, that all of these transactions were profitable and that the account showed a total profit of \$41,021.75 for the year.

The dispute, and the issue upon which this case trans, is, what was the nature of the Selma Feferholtz account? Was it a firm trading account, the profits from which inured to the benefit of WOH, or was it rather, a device employed by Ost to funnel the proceeds of the account to himself in an attempt to avoid being taxed therefor? After considering the testimony of the witnesses and the documentary evidence submitted by the parties, the Court is convinced beyond a reasonable doubt that the Selma Feferholtz account was a device created by Ost to wilfully evade paying the taxes due on the short-term capital gains realized from the sales of securities in

the Feferholtz account in 1968.

The Court finds the defendant's contention that the Feferholtz account was a firm trading account created to generate cash in order to make under-thetable payments to back office lp an inherently incredible one. Not only is the story itself an inherently unbelievable fabrication concocted solely for the purposes of this trial, the Court additionally finds that the/primary defense witnesses (Hayton, Weinberg and Ost himself) were incredible and their testimony is not worthy of belief. If believed, their story suggests that the Feferholtz account was created to generate income for WOH, income upon which no taxes were to be paid, income which was to be used for unreported cash payments to employees, and income which was allegedly used to prefer one creditor over all others. The Court is not persuaded by the defendant's attempt to admit uncharged illegal activities as a means of convincing the Court that he did not commit the crimes charged.

Although the Government adduced little direct evidence to support a finding that Ost received the proceeds of the Feferholtz account for his own use, the following factors convinced the Court of Ost's guilt beyond a reasonable doubt.

- 1. The "explanation" upon which Ost based his defense, and the demeanor of the witnesses testifying to it was such that the Court finds it to have been a fabrication which strongly indicates consciousness of guilt. This conclusion is bolstered by the testimony of Freilich that four months before the trial, Ost had asked him to testify that he had received \$600.00 from O'Brien. This attempt to discredit O'Brien and corroborate the "explanation" further tends to demonstrate Ost's guilt.
- 2. The Feferholtz account was in the maiden name of defendant's wife and the address of his mother. These facts are totally consistent with a finding that Ost himself benefitted from the account and inconsistent with a finding that it was a firm account.
- The books and records of WOH relating to the Feferholtz account have disappeared.
- 4. Ost was responsible for instructing O'Brien to draw checks on the Feferholtz account and deliver them to him.
- 5. The fact that there were no commissions charged for trades in the Feferholtz account is not inconsistent with the finding that the account was not a firm trading account. Other favored individual accounts were similarly not charged commissions.

erated income attributable to Ost in 1968, and that Ost did not record this income on his tax return for that year, or pay any taxes thereon, the element of 26 U.S.C. \$ 7201, which requires the existence of a tax deficiency is satisfied. It follows from the above findings that the Feferholtz account was a scheme devised by Ost to attempt to evade the payment of income taxes, and that the elements of wilfulness and an affirmative act constituting evasion have also been established. See Sansone v. United States, 380 U.S. 343, 351 (1965).

Thus, the Government has satisfied the Court beyond a reasonable doubt that Ost violated 26 U.S.C. \$ 7201.

U.S.C. § 7206(1), the findings made above clearly establish that when Ost signed his joint 1968 return, he knew that a material matter (the proceeds of the Feferhaltz account) had been omiled and that he had signed the return wilfully. Thus the findings necessary to convict Ost under § 7201 also serve to convict him under § 7206(1). See, Hensley v. United States, 406 F.2d 481, 486 (10th Cir. 1968).

The defendant is therefore found guilty on both counts.

JOHN M. CANNELLA United States District Judge

Dated: New York, N.Y. October 30, 1975.

FOOTNOTES

- 5 7201 provides that "[a]ny person who will-fully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall ... be guilty of a felony"
- 5 7206(1) provides that "[a]ny person who willfully makes and subscribes any return ... which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter ... shall be guilty of a felony...."
- In finding the defendant guilty, the Court relies solely upon the evidence regarding the Feferholtzaccount. The Court is not persuaded beyond a reasonable doubt that the other alleged evasions were wilfull.

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	In the presence of the attorney for the government the defendant appeared in person on this date	HONNH WAY	76 YEAR
counsit	Movever the court advised defendant of right to counsel as have counsel appointed by the court and the defendant thereupo	nd asked whether defendant	desired to
	XI WITH COUNSEL Frank B. Velle, Esq. (Name of counsel)		1
PLEA	GUILTY, and the court being satisfied that L	LNOT GUILTY	Ì
=	There being a finding/verdict of LX GUILTY. Defendant is discharged		
FINGING &	Defendant has been convicted as charged of the offense(s) of unlawfully, will did attempt to evade and defeat a large part of the owing by him and his wife to the United States of An oxilender year 1968, and unlawfully, wilfully and known and subscribe and cause to be made and subscribed a individual Income Tax Return (Form 1040) for the cat (2% Title 25, U.S. ode, Sec. 7201 and Title 18, U.S. ode, Sec. 7205(1) and Title 18	perion for the movingly did make	ard
CINTENCE 03 (ACLATION .norsa	The court asked whether defendant had anything to say why judgment should not be pronounced. By was shown, or appeared to the court, the court adjudged the defendant guilty as charged and considerably committed to the custody of the Attorney General or his authorized representative for imprise INDUMAS on count 1 and Fined \$5,000.00 committed. THREE(3)YEARS on count 2. Execution of satisface or Defendant in placed on probation for a period of Tito the standing perbation order of this court, and non-committed. Total fines of \$10,000.00	nicted and ordered that: The dominant for a period of PCUS Count 2 is Bus (RES (2) V 200	pended
	Bail fixed at 05.000.00 pending appeal. Defendance outtody of his attorney until bail is posted.	it released in t	he
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ATIONAL CITIONS OF CANCO	In addition to the special conditions of probation imposed above, it is hereby ordered that the gene are no day of this judgment be imposed. The Court may change the conditions of probation, reduce the probation probation period of five years permitted to distinct a maximum probation period of five years permitted.		
	is a commitment to the custody of the Attorney General and recommends,	It is ordered to at the Cia-	
	A YESE COPY	and commitment to be at	April 1
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V.i. *	JOHN H. CANBELLA 5-26-75	20 0 N.	1
	Date	100	
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A 202 Affidavit of Personal Service of Papers
COURT OF APPEALS
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES OF AMERICA, Plaintiff- Appellee, Index No.

- against -

HARVEY OST, Defendant- Appellant. Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

NEW YORK

.22

I, Reuben A. Shearer

depose and say that deponent is not a party to the action, is over 18 years of age and resides at 211 West 144th Street. New York. New York 10030

That on the 2nd day of August 1976 at One St. Andrews Plaza, New York, New York

deponent served the annexed

appinde

upon

Robert B. Fiske Jr.

the Attorney in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 2nd day of August 19 76

ROBERT T. BRIN NOTARY 1931 C, State of New York No. 31 - 0418950

Qualified in New York County Commission Expires March 30, 1977 Reuben Shearer